LIBRARY
SUPREME COURT, U.S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1948

No. 38

LA CROSSE TELEPHONE CORPORATION,
APPELLANT,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD, L. E. GOODING, HENRY RULE AND J. E. FITZGIBBON, AS MEMBERS OF THE WISCONSIN EMPLOYMENT RELATIONS BOARD

No. 39

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL B-953, A. F. OF L., APPELLANT,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD, L. E. GOODING, HENRY RULE AND J. E. FITZGIBBON, AS MEMBERS OF THE WISCONSIN EMPLOYMENT RELATIONS BOARD

APPEALS FROM THE SUPREME COURT OF THE STATE OF WISCONSIN

FILED MARCH 29, 1948.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 38

LA CROSSE TELEPHONE CORPORATION,
APPELLANT,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD, L. E. GOODING, HENRY RULE AND J. E. FITZGIBBON, AS MEMBERS OF THE WISCONSIN EMPLOYMENT RELATIONS BOARD

No. 39

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL B-953, A. F. OF L., APPELLANT,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD, L. E. GOODING, HENRY RULE AND J. E. FITZGIBBON, AS MEMBERS OF THE WISCONSIN EMPLOYMENT RELATIONS BOARD

APPEALS FROM THE SUPREME COURT OF THE STATE OF WISCONSIN

INDEX

	Original	Print
Proceedings in Supreme Court of Wisconsin	1	1
Appellant's Appendix in Case of La Crosse Telephone Corporation vs. Board	4	1
Memorandum decision of Circuit Court	5	1
Petition for review by Circuit Court	6	2
Notice of appearance and statement of position of Wisconsin Employment Relations Board	11	5

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 1, 1948.

—6711

	Original
Appellant's appendix in Case of International Brotherhood of Electrical Workers vs. Board	13
Recital as to memorandum decision of Circuit Court	14
Petition for review by Circuit Court	14
Notice of appearance and statement of position of Wisconsin Employment Relations Board	22
Judgment of Circuit Court	23
Proceedings before Wisconsin Employment Relations Board	24
Certification of representatives	24
Direction of election	29
Memorandum accompanying direction of election	32
Transcript of hearing	34
Caption and appearances	34
Testimony of Ray F. Dryer	35
E. B. Samp	36
Clifford Wetchen	48
Raymond A. Panzer	51
E. B. Samp (recalled)	61
Exhibit 3—Amended agreement between La Crosse Telephone Corporation and International Brotherhood of Electrical Workers, Local No. B-953	63
Exhibit 4—Letter to Raymond A. Panzer from Committee, August 31, 1946	64
Exhibit 5—Letter to Raymond A. Panzer from Committee, September 3, 1946	67
Respondent's appendix	71
Motion to dismiss appeals	73
Affidavit of David Previant	74
Argument in support of motion	78
Caption (omitted in printing)	82
Notice of appeal to Wisconsin Supreme Court of the Wisconsin Employment Relations Board in the La Crosse Telephone Corporation case, with service	83
Notice of appeal to Wisconsin Supreme Court of the Wisconsin Employment Relations Board in the International Brotherhood of Electrical Workers case, with service	88
Stipulation to consolidate cases for purposes of briefing, argument, consideration and decision	94
Minute entry of argument and submission	96
Opinion, Fritz, J.	98
Judgment in La Crosse Telephone Corporation case	109
Judgment in International Brotherhood of Electrical Workers case	110
Petition for appeal to Supreme Court of the United States by the La Crosse Telephone Corporation	111
Assignment of errors on appeal by La Crosse Telephone Corporation	113
Order allowing appeal of La Crosse Telephone Corporation	115
Stipulation as to appeal bond	116

Print		Original	Print
6	Appeal bond of the La Crosse Telephone Corporation (omitted in printing)	118	
6	Citation with service (omitted in printing)	120	
10	Petition for appeal, assignment of errors and prayer for reversal of the International Brotherhood of Electrical Workers	122	63
12	Order allowing appeal of International Brotherhood of Electrical Workers	125	66
12	Stipulation as to appeal bond	126	66
15	Appeal bond of the International Brotherhood of Electrical Workers (omitted in printing)	128	
18	Citation (omitted in printing)	130	
18	Stipulation as to transcript of record	131	68
19	Clerk's certificate (omitted in printing)	133	
19	Statement of points to be relied upon and designation of record, Case No. 38	134	69
28	Statement of points to be relied upon and designation of record, Case No. 39	136	70
34	Order postponing further consideration of the question of jurisdiction	137	71

[fols. 1-4]

IN SUPREME COURT OF WISCONSIN

No. 60

La Crosse Telephone Corporation, Petitioner and Respondent,

vs.

Wisconsin Employment Relations Board, L. E. Gooding, Henry Rule, and J. E. Fitzgibbon, Defendants and Appellants

Appellant's Appendix

[fol. 5] In Circuit Court of La Crosse County

Memorandum Decision (Omitting formal parts)

After a thorough consideration of the arguments presented upon the appeals in the above entitled matter from the Wisconsin Employment Relations Board, and a study of the extensive briefs submitted, I have come to the conclusion that the very recent decision by the Supreme Court of the United States in Bethlehem Steel Company et al., vs. New York State Labor Relations Board, and The Allegheny Ludlum Steel Corp. vs. Wm. J. Kelley et al., is so conclusive of the legal problems here involved as to relieve this court of the necessity of determining the questions raised on these appeals. In other words, it is my opinion that this decision of the United States Supreme Court leaves no constitutional authority in the Wisconsin Employment Relations Board to determine collective bargaining units and to conduct collective bargaining elections among employees or employers engaged in interstate commerce, and of course it is admitted that the La Crosse Telephone Corporation is so engaged in interstate commerce.

It is not necessary that I set forth at any length any extracts from the opinion of the United States Supreme Court above referred to because all of the parties are familiar with the substance of that decision and its scope. [fol. 6] I am, therefore, concluding this memorandum decision merely with the statement that in my opinion the action taken by the Wisconsin Employment Relations

Board is without jurisdiction and void in the instant case.

The attorneys for the appellants will prepare such formal order or judgment as is necessary to carry out the indicated conclusion of the court.

Dated at La Crosse, Wisconsin, this 28th day of April, 1947.

By the Court, R. S. Cowie, Judge.

IN CIRCUIT COURT OF LA CROSSE COUNTY

PETITION FOR REVIEW (Omitting formal parts)

The petition of the LaCrosse Telephone Corporation of LaCrosse, Wisconsin, by its attorneys, Hale, Skemp and Nietsch, respectfully prays that the Circuit Court in and for LaCrosse County, Wisconsin, review the Findings, Orders, Decisions and Certification made by the Wisconsin Employment Relations Board in the proceedings had before said board in the matter entitled "The petition of the Telephone Guild of Wisconsin, affiliated with the National Federation of Telephone Workers for the determination of bargaining representatives of employees of the LaCrosse Telephone Corporation of LaCrosse," and in support of said petition respectfully represents and shows to the court:

[fol. 7] 1. That petitioner is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin and is engaged in rendering communication service by wire in the city of LaCrosse and in interstate communications.

2. That the defendant Wisconsin Employment Relations Board and the members thereof constitute an administrative board pursuant to the provisions of Section 111.03 of the Wisconsin Statutes.

3. That on October 8, 1946, a petition was filed with the Wisconsin Employment Relations Board by the Telephone Guild of Wisconsin, affiliated with the Federation of Telephone Workers, requesting an election among the employes of the plaintiff for the purpose of determining what if any representations such employees desired for the purposes of collective bargaining; that a hearing on such petition

was conducted at LaCrosse, Wisconsin, on the 18th day of October, 1946; that on the 27th day of November, 1946 the defendant board entered and filed a direction of election as appears of record in said proceedings; that pursuant to such direction the defendant board conducted an election on the 17th day of December, 1946, in the city of LaCrosse, by use of ballots in the form which appear of record herein; that on the 14th day of January, 1947, the defendant filed its final decision in said matter which purports to determine the rights of this plaintiff LaCrosse Telephone Corporation, [fol. 8] the employees of the plaintiff, the Telephone Guild of Wisconsin, and the International Brotherhood of Electrical Workers, Local Union B-953; that said final decision and the other records and proceedings heretofore referred to are matters of record before the Wisconsin Employment Relations Board and upon the filing of the certified record and proceedings by such Board, the petitioner incorporates the same herein as though a part hereof.

4. That prior to the filing of the petition by the Telephone Guild of Wisconsin with the defendant Board, the plaintiff herein had consummated a binding agreement with its employees in the Plant and Traffic Department which by its terms was in full force and effect until the first day of December, 1947; that at the time of entering into said agreement plaintiff's employees in the Plant and Traffic Departments were members of the International Brotherhood of Electrical Workers, Local Union B-953 and said union was the only labor union in petitioner's establishment, and was the bargaining representative of said Plant and Traffic Department employees.

5. That upon the foregoing facts the LaCrosse Telephone Corporation of LaCrosse petitions for a review of the decision and all other proceedings before the Wisconsin Employment Relations Board in accordance with the provisions of the statutes of the State of Wisconsin in such case made and provided for the following reasons:

[fol. 9] (1) That the direction for an election as made by the defendant board on the 27th day of November, 1946 contained a memorandum in which the board erroneously found that no contract existed between the LaCrosse Telephone Corporation, and the International Brotherhood of Electrical Workers, Local B-953; that such finding by the

board was without its jurisdiction, in excess of its statutory authority, was erroneous as a matter of law, and contrary to the constitutional rights and privileges of the LaCrosse Telephone Corporation of LaCrosse; that the plaintiff and petitioner herein alleges that it has a valid and binding agreement with its Plant and Traffic Employees which is entered into with the duly authorized representatives of a duly constituted labor organization which contract is binding upon petitioner and said employees and was legally binding on said parties prior to the petition made by the Telephone Guild of Wisconsin to either the National Labor Relations Board or to the Wisconsin Employment Relations Board; that the finding of the defendant board as to the non existence of this contract was without the jurisdiction of the board; that the finding of the board as to the non-existence of this contract contravenes the rights of the plaintiff in that it is in violation of Article I Section 10 of the Federal Constitution which provides that no state shall make any law impairing the obligation of contracts, [fol. 10] the Fifth Amendment to the Constitution which prohibits the taking of life, liberty or property without due process of law, and the 14th Amendment to the Constitution which provides that no state shall deprive any person of life, liberty or property without due process of law, or deny any person within its jurisdiction the equal protection of the law.

(2) Petitioner further alleges that the form of the ballot which was used by the defendant board in conducting the election was ambiguous in form and incapable of interpretation by the employees or the defendant board and therefore does not constitute a sufficient basis for the certification of representatives by the defendant board in its decision on January 14, 1947; that said ballots and decision above referred to are a part of said record and are incorporated herein as a part of this petition.

Wherefore petitioner prays that the court review the Findings, Orders, Decisions, and Certification made by the Wisconsin Employment Relations Board and reverse and set aside the same, and to declare and determine that a contract exists between the La Crosse Telephone Corporation, the petitioner herein, and its employees in the Plant and Traffic Departments through its duly constituted labor organization, the International Brotherhood of Electrical

Workers, Local B-953, and to restrain any unfair labor [fol. 11] practices in violation of said contract and the constitutional rights and privileges of the petitioner.

In Circuit Court of La Crosse County

Notice of Appearance and Statement of Position of Wisconsin Employment Relations Board (Omitting formal parts)

Please take notice that the respondent (defendant), Wisconsin Employment Relations Board, appears in the above entitled matter by John E. Martin, Attorney General, Stewart G. Honeck, Deputy Attorney General, and Beatrice Lampert, Assistant Attorney General, its attorneys, and demands that a copy of all subsequent pleadings, documents, notices or other papers subsequent to the petition for review be served on said attorneys at their offices in the State Capitol, Madison 2, Wisconsin.

Take further notice that the position of said respondent is as follows:

That the certification of representatives and order made by the respondent board on January 14, 1947, which the petitioner seeks to review and set aside are not void or unlawful for any of the reasons set forth in the petition for review or for any other reason and alleges that the certification of representatives and order complained of are valid and lawful.

[fol. 12] Wherefore this respondent prays that the said certification and order be affirmed.

Dated at Madison, Wisconsin this 18th day of February, 1947.

[fol. 13] IN SUPREME COURT OF WISCONSIN

No. 61

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL B-953, A. F. OF L., Respondent,

v.

WISCONSIN EMPLOYMENT RELATIONS BOARD, L. E. GOODING, HENRY RULE AND J. E. FITZGIBBON AS MEMBERS OF THE WISCONSIN EMPLOYMENT RELATIONS BOARD, Appellants

Appellant's Appendix

IN CIRCUIT COURT OF LA CROSSE COUNTY

[fol. 14] MEMORANDUM DECISION (Printed in Appendix of LaCrosse Telephone Corp. v. W. E. R. B., et al.)

IN CIRCUIT COURT OF LA CROSSE COUNTY

Petition for Review (Omitting formal parts)

The Petitioner above named by Padway, Goldberg & Previant, its attorneys, respectfully prays that the Honorable Circuit Court in and for LaCrosse County, Wisconsin, review the findings, orders, decision and certification made by the Wisconsin Employment Relations Board, and reverse and set aside the same in the proceedings before that Board entitled "In the Matter of the Petition of Telephone Guild of Wisconsin affiliated with National Federation of Telephone Workers For Determination of Bargaining Representatives for Employees of the La Crosse Telephone Corporation of La Crosse".

In support of its Petition, Petitioner respectfully shows the Court as follows:

I

Petitioner is an unincorporated labor association affiliated with the American Federation of Labor, having its office and principal place of business in the City of Eau Claire, County [fol. 15] of Eau Claire, State of Wisconsin, and having a branch office in the City of LaCrosse, County of LaCrosse, State of Wisconsin.

II

The Respondent, Wisconsin Employment Relations Board and the individual members thereof, constitute an adminis-

trative body existing under and by virtue of Chapter 111, Wisconsin Statutes, having its principal office in the City of Madison, Dane County, Wisconsin.

III

The LaCrosse Telephone Corporation of LaCrosse is a Wisconsin corporation with its principal office in the City of LaCrosse, and is engaged in the furnishing of telephone communication both within the State of Wisconsin and to various and numerous points outside the State of Wisconsin and throughout the United States.

IV

The LaCrosse Telephone Corporation of LaCrosse is engaged in interstate commerce within the terms and meanings [fol. 16] of the National Labor Relations Act (29 U. S. Code, Sections 151-166), and questions concerning the representations of said employees of said Company are questions affecting commerce within the terms and definitions of the aforesaid Act.

V

For a number of years last past a large majority of the employees of the LaCrosse Telephone Corporation of La Crosse were members of the Petitioner Union and had designated the Petitioner Union as their bargaining representative.

VI

Prior to September 20, 1946, the LaCrosse Telephone Corporation and the Petitioner entered into collective bargaining agreements covering the employees in the Traffic and Plant Departments for the period extending to December 1, 1947.

VII

On September 20, 1946, the Telephone Guild of Wisconsin affiliated with the National Federation of Telephone Workers, an unincorporated voluntary association operating as [fol. 17] a labor union, filed a Petition with the National Labor Relations Board at its Regional Office in Minneapolis, Minnesota, requesting that Board to investigate a question of representation which had allegedly arisen among all employees of the LaCrosse Telephone Corporation, and ask-

ing that it be certified as a collective bargaining representative for all such employees.

Notice of the filing of said Petition was received by the LaCrosse Telephone Corporation on or about September 26, 1946, after the LaCrosse Telephone Corporation and Petitioner had already entered into a collective bargaining agreement for the period to December 1, 1947. The National Labor Relations Board has not relinquished the jurisdiction conferred upon it by the filing of said Petition.

VIII

On October 8, 1946, a Petition for Certification of Representatives was filed with the Wisconsin Employment Relations Board by the Telephone Guild of Wisconsin affiliated with the National Federation of Telephone Workers, and that hearing was had thereon on the 18th day of October, 1946.

[fol. 18]

IX

On the 27th day of November, 1946, the Wisconsin Employment Relations Board directed that an election be conducted among certain employees of the LaCrosse Telephone Corporation, and in an accompanying decision said Board erroneously found that there was no binding agreement in effect between the LaCrosse Telephone Corporation and International Brotherhood of Electrical Workers, Local Union No. B-953, at the time when the Company received notice that the Telephone Guild of Wisconsin claimed to represent a majority of the employees, and such Direction of Election was predicated upon such erroneous finding.

X

Pursuant to said Direction of Election an election was conducted by the Wisconsin Employment Relations Board on the 17th day of December, 1946, following which the Wisconsin Employment Relations Board on the 14th day of January, 1947, certified the Telephone Guild of Wisconsin as the exclusive collective bargaining representative, for all employees in the Traffic and Plant Departments excluding executive and supervisory employees.

[fol. 19] XI

The various matters afore referred to are more specifically set forth in the record and proceedings before the Wisconsin Employment Relations Board, and upon the filing of such record and proceedings herein by said Wisconsin Employment Relations Board, the Petitioner incorporates the same herein as though a part hereof.

XII

The decisions, orders, and certification of the Wisconsin Employment Relations Board are

1. Unsupported by substantial evidence in view of the entire record as submitted, in that the Board erred in finding that there was no binding agreement in effect between Petitioner and LaCrosse Telephone Corporation at the time such corporation first learned of the claim of the Telephone Guild of Wisconsin that it represented a majority of all employees of the La Crosse Telephone Corporation; and in that the employees were required to express their choice on ballots that were ambiguous in form and incapable of being properly understood.

2. Contrary to the constitutional rights and privileges of the Petitioner in that Chapter 111 of the Wisconsin Statutes has been so construed and applied as to bring it into conflict with the Act of Congress known [fol. 20] as the National Labor Relations Act, 49 Stat. 449 and the rulings and decisions of the National Labor Relations Board thereunder contrary to Article I, Section 8, and Article VI of the Constitution of the United States, and in that Petitioner has been deprived of liberty and property without due process of law and has been denied the equal protection of the laws contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States and has had the obligation of its contract impaired in violation of Section 10, Article I of the Constitution of the United States.

XIII

The Wisconsin Employment Relations Board had no jurisdiction over the subject matter for the reason that the National Labor Relations Board had previously undertaken

to exercise the jurisdiction which the National Labor Relations Act conferred upon it, and has not insofar as the record discloses relinquished such jurisdiction.

XIV

The decision and order of the Wisconsin Employment Relations Board affects the status of the employees of the [fol. 21] LaCrosse Telephone Corporation, and causes a forfeiture of collective bargaining rights guaranteed to the Petitioner under the National Labor Relations Act.

XV

The certification made by the Wisconsin Employment Relations Board is in excess of its statutory authority and jurisdiction because the La Crosse Telephone Corporation is engaged in interstate commerce, and the question of the representation of its employees is therefore a matter within the jurisdiction of the National Labor Relations Board under the National Labor Relations Act, and in that it had no authority or jurisdiction to direct an election where there was in existence a collective bargaining agreement which was executed prior to the time the LaCrosse Telephone Corporation received notice that some other Organization claimed to represent a majority of the employees in the units affected.

XVI

The certification is outside the statutory authority or jurisdiction of the Board, in that the results of the balloting [fol. 22] in the various units did not afford sufficient basis for the certification issued.

Wherefore, Petitioner prays that the certification of the Wisconsin Employment Relations Board be reversed, set aside, and held for naught.

In Circuit Court of La Crosse County

Notice of Appearance and Statement of Position of Wisconsin Employment Relations Board (Omitting Formal Parts)

Please Take Notice that the respondent (defendant), Wisconsin Employment Relations Board, appears in the above

entitled matter by John E. Martin, Attorney General, Stewart G. Honeck, Deputy Attorney General, and Beatrice Lampert, Assistant Attorney General, its attorneys, and demands that a copy of all subsequent pleadings, documents, notices or other papers subsequent to the petition for review be served on said attorneys at their offices in the State Capitol, Madison 2, Wisconsin.

Take Further Notice that the position of said respondent is as follows:

That the certification of representatives and order made by the respondent board on January 14, 1947, which the petitioner seeks to review and set aside are not void or unlawful for any of the reasons set forth in the petition for review or for any other reason and alleges that the certification of [fol. 23] representatives and order complained of are valid and lawful.

Wherefore this respondent prays that the said certification and order be affirmed.

Dated at Madison, Wisconsin this 18th day of February, 1947.

In Circuit Court of La Crosse County

Judgment (Omitting Formal Parts)

The Petition of International Brotherhood of Electrical Workers, Local B-953, A. F. of L., to set aside the certification of the Wisconsin Employment Relations Board, made and entered on the 14th day of January, 1947, in the proceedings before that Board entitled "In the Matter of the Petition of Telephone Guild of Wisconsin, affiliated with National Federation of Telephone Workers, For Determination of Bargaining Representatives for Employees of The La Crosse Telephone Corporation of La Crosse", having come on for hearing on the 27th day of March, 1947, before this Court, the Honorable Robert S. Cowie presiding, the International Brotherhood of Electrical Workers, Local B-953, A. F. of L. appearing by Padway, Goldberg & Previant, represented by David Previant, its attorneys; the Wisconsin Employment Relations Board appearing by John E. Martin, Attorney General, Stewart G. Honeck, Deputy [fol. 24] Attorney General, and Beatrice Lampert, Assistant Attorney General, its Attorneys; the La Crosse Telephone

Corporation appearing by Hale, Skemp & Nietsch, represented by Thomas H. Skemp, its attorneys, and the Telephone Guild of Wisconsin appearing by Donald J. Martin, its attorney, and the Court having heard the arguments of the parties, having taken the matter under advisement, having studied the briefs submitted, and having made its written decision in said matter under date of April 28, 1947, in which the Court concluded that the action taken by the Wisconsin Employment Relations Board was without jurisdiction and void, now therefore,

It Is Ordered, Adjudged and Decreed that the Petition of the International Brotherhood of Electrical Workers, Local B-953, A. F. of L. praying that the certification of the Wisconsin Employment Relations Board afore referred to be reversed, set aside and held for naught, is granted, and the certification of said Board is herewith reversed and set aside.

Before Wisconsin Employment Relations Board

Certification of Representatives (Omitting Formal Parts)

[fol. 25] The Wisconsin Employment Relations Board having held a hearing on the 18th day of October, 1946, on a petition for the determination of representatives for certain employes of the La Crosse Telephone Corporation, and the Board having issued on the 27th day of November, 1946, a Direction of Election, and having conducted an election by secret ballot on the 17th day of December, 1946, in the City of La Crosse, La Crosse County, Wisconsin, and having found that the results of the election were as follows:

Traffic Department—Question No. 1

Do you desire to have the Traffic Department employes of the La Crosse Telephone Corporation bargain collectively as a separate unit (group)?

1. Total number eligible to vote	114
2. Total ballots cast	68
3. Total ballots challenged	0
4. Total ballots void	0
5. Total ballots blank	3
6. Total valid ballots counted	65

	13
7. Ballots cast in favor of separate unit	13
8. Ballots cast against separate unit	52

Question No. 2

1. Total number eligible to vote	114
2. Total ballots cast	68
3. Total ballots challenged	0
4. Total ballots void	0
[fol. 26]	
5. Total ballots blank	1
6. Total valid ballots counted	67
7. Ballots cast for the Telephone Guild of Wisconsin affiliated with the National Federation of Telephone Workers	64
8. Ballots cast for the International Brotherhood of Electrical Workers, Local Union B-953, affiliated with the A. F. L.	1
9. Ballots cast for Neither	2

Plant Department—Question No. 1

Do you desire to have the Plant Department employes of the La Crosse Telephone Corporation bargain collectively as a separate unit (group)?

1. Total number eligible to vote	40
2. Total ballots cast	40
3. Total ballots challenged	0
4. Total ballots void	1
5. Total ballots blank	2
6. Total valid ballots counted	37
7. Ballots cast in favor of separate unit	12
8. Ballots cast against separate unit	25

Question No. 2

1. Total number eligible to vote	40
2. Total ballots cast	40
3. Total ballots challenged	0
4. Total ballots void	0
5. Total ballots blank	0
6. Total valid ballots counted	40
[fol. 27]	
7. Ballots cast for the Telephone Guild of Wisconsin affiliated with the National Federation of Telephone Workers	27

8. Ballots cast for the International Brotherhood of Electrical Workers, Local Union B-953, affiliated with the A. F. L. 13
9. Ballots cast for Neither 0

Office Employes—Question No. 1

Do you desire to have the office employes of the La Crosse Telephone Corporation bargain collectively as a separate unit (group)?

1. Total number eligible to vote 31
2. Total ballots cast 28
3. Total ballots challenged 0
4. Total ballots void 0
5. Total ballots blank 0
6. Total valid ballots counted 28
7. Ballots cast in favor of separate unit 18
8. Ballots cast against separate unit 10

Question No. 2

1. Total number eligible to vote 31
2. Total ballots cast 28
3. Total ballots challenged 0
4. Total ballots void 0
5. Total ballots blank 0
6. Total valid ballots counted 28

[fol. 28]

7. Ballots cast for the Telephone Guild of Wisconsin affiliated with the National Federation of Telephone Workers 10
8. Ballots cast against the Telephone Guild of Wisconsin affiliated with the National Federation of Telephone Workers 18

Now, Therefore, by virtue of and pursuant to the power vested in the Wisconsin Employment Relations Board by Section 111.05 (2) and (3) of the Wisconsin Statutes;

It Is Hereby Certified that a majority of the eligible employes of the La Crosse Telephone Corporation in the unit consisting of office employes chose to constitute themselves a separate unit for the purposes of bargaining collectively with the La Crosse Telephone Corporation, and that a majority of such employes selected no union as their collective bargaining representative, and therefore the peti-

tion for determination of collective bargaining representatives for the office employes of the La Crosse Telephone Corporation is hereby dismissed.

It Is Further Certified that a majority of the employes in the Traffic Department and Plant Department of the La Crosse Telephone Corporation each voted not to constitute themselves a separate collective bargaining unit and that such employes constitute all the employes of the La Crosse [fol. 29] Telephone Corporation, excluding the office employes, and that a majority of the employes in both of said Traffic Department and Plant Department selected the Telephone Guild of Wisconsin, affiliated with the National Federation of Telephone Workers as their collective bargaining representative, and that, pursuant to the sections of Section 111.05 of the Wisconsin Statutes, the said Telephone Guild of Wisconsin affiliated with the National Federation of Telephone Workers, is the exclusive collective bargaining representative of all the employes of the La Crosse Telephone Corporation in a unit consisting of all Traffic Department employes and all Plant Department employes, excluding executives and supervisory employes, in respect to rates of pay, wages, hours, and other conditions of employment.

Before Wisconsin Employment Relations Board

Direction of Election (Omitting Formal Parts)

Petition having been filed with the Wisconsin Employment Relations Board by the Telephone Guild of Wisconsin, affiliated with the Federation of Telephone Workers, requesting that an election be conducted among the employes of the La Crosse Telephone Corporation of La Crosse, Wisconsin, for the purpose of determining what, if any representation such employes desire for the purpose of collective bargaining; and a hearing on such petition having been [fol. 30] conducted at La Crosse, Wisconsin, on the 18th day of October, 1946; and the Board having considered the evidence and being satisfied that questions have arisen concerning the collective bargaining units as well as representation for the employes of the La Crosse Telephone Corporation;

Now, Therefore, it is Directed

That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Board within thirty (30) days from the date of this Directive among all Plant Department employes of the La Crosse Telephone Corporation, excluding executives and supervisory employes who were employed on the 18th day of October, 1946, except such employes as may prior to the election quit their employment or be discharged for cause for the purpose of determining; (1) whether or not a majority of such employes desire to constitute themselves a separate unit for the purpose of collective bargaining; and (2) whether a majority of such employes desire to be represented for the purposes of collective bargaining by the Telephone Guild of Wisconsin affiliated with the National Federation of Telephone Workers, by the International [fol. 31] Brotherhood of Electrical Workers, Local Union B-953, affiliated with the American Federation of Labor; or by neither of such organizations.

It is further directed that at the same time an election be conducted among all Traffic Department employes, excluding executives and supervisors, who were employed on the 18th day of October, 1946, except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining; (1) whether or not a majority of such employes desire to constitute themselves a separate unit for the purposes of collective bargaining; and (2) whether a majority of such employes desire to be represented for the purposes of collective bargaining by the Telephone Guild of Wisconsin affiliated with the National Federation of Telephone Workers, by the International Brotherhood of Electrical Workers, Local Union B-953, affiliated with the American Federation of Labor; or by neither of such organizations.

It is further directed that at the same time an election be conducted among all office employes, employed by the La Crosse Telephone Corporation, excluding executives and supervisory employes who were employed on the 18th day of October, 1946, except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining; (1) whether or not [fol. 32] a majority of such employes desire to constitute themselves a separate unit for the purposes of collective bargaining; and (2) whether a majority of such employes desire to be represented for the purposes of collective bar-

gaining by the Telephone Guild of Wisconsin, affiliated with the National Federation of Telephone Workers.

Given under our hands and seal at the City of Madison, Wisconsin, this 27th day of November, 1946.

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION
(Omitting Formal Parts)

On September 20, 1946, the Telephone Guild of Wisconsin filed with the National Labor Relations Board a petition for an election among certain employes of the La Crosse Telephone Corporation. The company received notice of this petition by a letter dated September 24th mailed from the office of the National Labor Relations Board at Minneapolis. At the time the petition was filed before the National Board there was in effect a collective bargaining agreement between the La Crosse Telephone Corporation and the I. B. E. W., which contract by its terms, expired on December 1, 1946.

Prior to the receipt by the company of the notice from the National Labor Relations Board that the Telephone [fol. 33] Guild was claiming to be the representative of all of its employes, the company had carried on negotiations with local committees resulting in an agreement on the part of the company to increase the wage rates of its employes. These negotiations were carried on the last of August and the first part of September. On September 23, at a meeting of one of the groups represented by the union, the offer of the company was rejected because the agreement contained no satisfactory re-opening date at which time the wage question might be reviewed. On September 25, at a union meeting, a re-opening date negotiated with the company was finally approved and the company notified of such approval on September 26th or 27th.

There was, therefore, in effect a collective bargaining agreement from September 27th, 1946 that would extend to December 1, 1947. We are satisfied, however, that such agreement was finally arrived at at the time the employer was given notice by the union that the re-opening date was satisfactory and that until such time, no binding agreement had been entered into between the employer and the union. There was, therefore, no binding agreement when the company was notified that another union claimed to represent a majority of the employes that the I. B. E. W. proposed to

represent, and a contract entered into subsequent to the receipt of such notice cannot operate as a bar to an election. [fol. 34] We have, therefore, directed the conduct of an election and in our direction have given the employes in the Plant Department, the Traffic Department, and the Office Department an opportunity to determine whether they desire to constitute themselves separate units or not. In the Plant Department and the Traffic Department both the Telephone Guild and the I. B. E. W. will appear on the ballot, while in the Office Department, because of the fact that the I. B. E. W. does not desire to represent such employes, the only question submitted will be whether the employes desire to be represented by the Telephone Guild or not.

BEFORE WISCONSIN EMPLOYMENT RELATIONS BOARD

Transcript of Hearing

Pursuant to notice, the above entitled matter came on for hearing before the Wisconsin Employment Relations Board in the La Crosse County Court House, La Crosse, Wisconsin, on Friday, October 18, 1946, commencing at 10:00 A. M.

Present: Chairman L. E. Gooding.

APPEARANCES:

Mr. Donald J. Martin, Attorney, and Mr. Ray F. Dryer, Executive Secretary, for the Telephone Guild of Wisconsin. [fol. 35] Hale, Skemp and Nietsch, by Mr. T. H. Skemp, Attorney, for La Crosse Telephone Corporation.

Local Union B-953, Int'l Brotherhood of Electrical Workers, by Padway and Goldberg, Attorneys, by David Previant.

Whereupon the following proceedings were held:

* * * * * * *

Mr. Martin: A petition was originally filed with the National Labor Relations Board on September 20, Mr. Gooding, asking for a unit defined as all employes of the La Crosse Telephone Company. An informal conference was held and the Guild withdrew—that is, the petition from

the National Labor Relations Board. We filed the petition which we have here on October 8th with the State Board. The employes speaking of are presently covered by a contract with the International Brotherhood of Electrical Workers.

Ray F. Dryer, being first duly sworn, testified:

Direct examination.

By Mr. Martin:

I am executive secretary of the Telephone Guild of Wisconsin affiliated with the National Federation of Telephone workers. We admit to membership all telephone workers in the state. We have had a request from the employees of the [fol. 56] La Crosse telephone company for membership and they have supplied us with approximately 85 applications which we are informed is over 50%. Those applications for membership cards were signed during the months of August and September of this year.

Cross-examination.

By Mr. Previant:

We have petitioned for an election among the employes of the company because it is felt that all employees should be covered by contract with the company. It would be our desire that if an election would be conducted, it would be conducted among all employees eligible for union membership which excludes executives and supervisory employees. If it were found to be more practical to have only the employees represented by the International Brotherhood of Electrical Workers, we would be willing to exclude others.

E. B. Samp, being first duly sworn, testified:

Direct examination.

By Mr. Martin:

I am vice president and manager of the La Crosse Telephone Corporation. I handle matters which relate to labor problems for that company. We have a contract covering

our employees in the plant and traffic departments at the present time with the A. F. of L., International Brotherhood of Electrical Workers. That contract expires December 1, 1946.

[fol. 37] There were changes made in the contract recently, principally wage adjustments. The wage adjustments were put into effect September 1st. I think the first pay check under them was October 3rd made retroactive to September 1st.

The agreement respecting those wage increases was made with the men of the plant department September 3rd and the traffic department September 12 or 13. The reason payment was not put into effect sooner was a matter of adjusting the payroll—a considerable amount of work due to the fact the plant department at that time was on a 44 hour week and we had to go back and figure adjustments to September 1st on the new rate. Our office is in confusion in regard to payments at this time, in regard to the transfer of the accounting from our office to the division office.

I was satisfied that the agreements with respect to those wages were in effect as of September 3rd for the men and September 12 or 13 for the traffic. After those dates we had some discussion when members of the union signed the agreement—the mechanics of the signing, the same as we usually have after the agreement is reached. On September 20, 1946, we discussed with Mr. Boyle at Chicago on the telephone, not the wages but another amendment we wanted to make in regard to an earlier date for opening the contract for new wage negotiations. At our original meeting we did not definitely arrive at the dates of opening the con-[fol. 38] tract for new wage negotiations. We felt and the committee felt probably December 1, 1947 would be too late which would permit us to open the contract for new wage negotiations; it should be earlier than that. That was mutual agreement. In other words, the contract cannot be opened March 1, 1947 except at mutual agreement. It can be reopened at the request of either party. The agreement with respect to the reopening clause was September 25. That agreement was reached with most of the committee and Mr. Wetchen and Mr. Panzer.

The agreements of September 3 and 12 or 13 was a notification from the shop stewards that their membership had voted on wage proposals and accepted them. Those pro-

posal originated from committee of members coming into my office and asking to negotiate wages.

That negotiation was carried on with the traffic department August 31st and with the plant department September 3rd. On both occasions the agreements were reached with committee members at the plant of the company. The International Brotherhood of Electrical Workers, Local B-953 was not consulted by the company with respect to this agreement. The previous practice was to negotiate wages with the committee. The International Brotherhood of Electrical Workers was consulted with respect to those wage increases in previous years.

[fol. 39] We considered the agreement as final before the officers of the electrical workers had accepted the wage agreements. That had been the general practice where the committee and the company agreed on wages, that is it became effective on the date they agreed upon and signed the contract. We considered the mechanics of getting the contract signed but we would not never hold up wage adjustments waiting to get the contract signed.

The agreement with respect to wages was signed by committee members at that time. I have a letter here dated September 12 signed by the shop steward of the traffic department which says: "A special meeting of local and toll operators of the La Crosse Telephone Company was held Wednesday, September 11, 1946. The purpose of this meeting was to discuss new wage scales as recommended by the La Crosse Telephone Corporation. The letter to Mr. Ray Panzer, Business Agent, B-953, I. B. E. W. was read to the group. After a short discussion a rising vote was taken; a vote of 30 to 0 in favor of the new wage scale was recorded. We are taking this means of notifying the La Crosse Telephone Corporation of our acceptance of the new wage rate." • • • The contract amendment respecting the wage increase has probably not been signed by the officials of the company. In fact I don't think it has come back from the International. [fol. 40] There is no agreement completely executed at this time with respect to that.

Mr. Previant: That question calls for a conclusion as to what is a completely executed contract and we therefore object to it.

Q. I will withdraw my question with respect to that.

With respect to this letter the amendment and wages was accepted by the stewards on September 12 and by the mem-

bership on September 11. An agreement with respect to a reopening clause wasn't effective until September 25. A separate amendment was drawn up to cover the reopening clause. It has not been signed by the company. We are waiting for both the amendment with respect to wages and the amendment with respect to the reopening clause.

The letter I just read covers only traffic. The amendments I am referring to covered both plant and traffic. The amendments we are waiting for execution apply to both traffic and plant.

The International Brotherhood of Electrical Workers notified me they had accepted the agreement with respect to wages of the plant people on September 27. The I. B. E. W. office notified me September 27 that they had accepted the changes with respect to wages and with respect to the reopening clause.

[fol. 41] With respect to the plant people I was satisfied previous to September 27 that this had been acceptable, but I had not been notified and no agreement had been made with respect to that situation. I was satisfied the agreement was in effect September 25.

Cross-Examination.

By Mr. Previant:

When I referred to a contract which expires December 1st I have reference to Exhibit 3. That agreement calls for a 90 day notice to stop an automatic renewal. I did not get such notice 90 days prior to December 1, 1946. I got a communication from the union indicating the desire of the union to make an amendment to that agreement. I have reference to a letter on the stationery of the I. B. E. W., Local Union B-953, Eau Claire, Wisconsin, dated August 28, 1946 and addressed to E. B. Samp, Vice-President and Manager, La Crosse Telephone Corporation which reads: "Dear Mr. Samp: To meet the notice requirements of our agreement, we wish to notify you we desire to amend the agreement. The amendments will be drawn up and presented within the required time limits of the agreement. Yours very truly, Local Union B-953, I. B. E. W."

After receipt of that letter I conferred with the bargaining committees of both the traffic and plant departments; with the traffic department August 31st and plant depart-

[fol. 42] ment September 3rd. With respect to the traffic department that committee and our company arrived at an agreement which was reduced to writing and signed by members of the committee and me. I am referring to a letter dated August 31, 1946 addressed to Mr. Ray A. Panzer, Local Union B-953, I. B. E. W., Eau Claire, Wisconsin, which has typewritten signatures of members of the committee and sets forth a wage schedule to be incorporated in Article 5 of the agreement.

With reference to the meeting of the plant division on September 3, 1946 I have in my file a similar letter bearing the typewritten signatures of the committee relating to proposed changes to be incorporated in Article VI. These are copies of the originals which were forwarded to Mr. Panzer. So then as of August 31st with respect to the traffic department and as of September 3 with respect to the plant department I had entered into an agreement in writing with the bargaining committee of those various departments making changes in the wage articles of the agreement which was to expire December 1, 1946. . . .

Subsequently in addition to these proposed wage changes I agreed with the representatives of the union to a wage reopening clause. It provides in substance either party on 30 days notice prior to March 1, 1947 could give notice of a desire to negotiate changes in the wage clauses of the agree-
[fol. 43] ment. Then it was my understanding that the agreement went on to December 1947. That would have been the original agreement which was to have expired December 1, 1946 as amended but would then continue on to December 1, 1947. So when I said we have a contract which expires December 1, 1946 I was referring to the original unamended contract which has that expiration date. As of today our agreement with Local B-953 expires December 1, 1947.

The La Crosse Telephone Corporation is a subsidiary of the Central Telephone Company which has other corporations in Illinois, Virginia and many states. Other subsidiaries of that parent corporation have telephone companies in the Chicago Illinois area. A contract covering the telephone utility in Chicago was negotiated in August, 1946. That was also negotiated with local unions affiliated with the International of the I. B. E. W. That has a bearing upon the fact that our negotiations were concluded as quickly as they were and at the time they were. We made negotiations

for a new wage scale for what we call the Park Ridge District in Illinois to become effective September 1st and we felt since we raised the wages there and were going to place new wages into effect there that we would likewise do so here due to the fact that wages were lower and we wanted to get them somewhere near so we would not have dissention. Park Ridge is operated from the La Crosse office. That was the [fol. 44] reason these negotiations were commenced and the contracts executed as they were, rather than wait until December first, or sometime thereafter. There was considerable agitation by the plant men to go back to 40 hours a week and several times we heard discussions by some of the department heads or supervisors that the men were unrestful and wanted to return to the 40 hour week as quickly as possible.

Redirect Examination.

By Mr. Martin:

I testified that I was satisfied with these amendments, but they have not been signed. I think certain evidence in the file would show we did agree, and that the matter of signing had to go to the international office and to our general office and be signed by the general manager and the general treasurer of the company.

I am not certain as of this date if they have been signed. I can only assume they will be and that they are. It has been one of our practices after completing wage negotiations that the contracts are then sent to our International and to our general offices for signature.

It is not exactly necessary to get approval before an agreement can be considered in effect. I am vice president of the company and I can obligate the company. It is a matter of formality as far as we are concerned which has been followed [fol. 45] over a period of years.

Examination.

By Mr. Gooding:

The only written request we had respecting the proposed amendments referred to in the letter of August 28 was the one the committee and the shop steward brought in August 31st. On August 31st and early in September I arrived at an agreement with the plant department and traffic depart-

ment as to their change in wages. With respect to the traffic department there were no other changes made in the proposed 1947 agreement except in wages. With respect to the plant department it was a change in working hours which was agreed upon at the same time. The reopening clause was negotiated September 25. That was negotiated between myself representing the company and the committee representing the union. Mr. Panzer was on the committee. It was after September 25 that the matters were reduced to writing and the new contract drafted. That was to be submitted for signatures. The final agreement was arrived at, all the terms were incorporated, as a result of the agreement of September 25.

The date we received the letter notifying us that the Telephone Guild of Wisconsin claimed to represent the employees is not stamped. We received a letter from N. L. R. [fol. 46] B. dated September 24 informing us that the Telephone Guild of Wisconsin had filed a petition alleging that a question of representation had arisen. That is the first notice we had of the Guild's claim to represent any of the employees. The letter was addressed from Minneapolis.

Thereafter there was a meeting between the company and representatives of the two unions about September 30, five or six days after the letter.

I received the letter from the N. L. R. B. after the meeting of September 25.

Redirect Examination.

By Mr. Martin:

We did not have separate negotiations with respect to reopening date for the traffic and plant departments. The men we were negotiating with was to affect plant and traffic alike. No date other than March 30 was agreed upon at any time. There was discussion with respect to a June reopening clause to affect both departments.

The notice given by the union 90 days prior to the expiration date of the 1946 contract that it desired to amend the contract did not specify wages. It just said amendments. The amendments negotiated as I indicated before covered the reopening clause for March.

[fol. 47] Recross Examination.

By Mr. Previant:

These agreements of August 31 and September 3 were signed by me. That is, the letter and the agreement which was sent to Mr. Panzer was signed by the members of the committees with whom I met and by me. Our written signatures appeared on those summaries of the results of the meeting or the statement of the results of the meeting.

Cross-Examination.

By Mr. Skemp:

The letters I have been questioned about that are in my file are exact copies of the originals sent to Mr. Panzer. The original was signed by all the persons whose typewritten signatures appear on the copy. The signatures are: For the committee of employees that negotiated with me for the traffic department, Rose Konop, Sigrid Braathen, Alice Olson, Ann Louise Schmaltz. For the company, E. B. Samp. For the plant department, for the committee that negotiated with me: Pearl Pearson, Philip Haag, Robert Schultz, George Rief. Accepted for the company by E. B. Samp, Manager. • • •

[fol. 48] Clifford Wetchen, being first duly sworn, testified:

Direct Examination.

By Mr. Martin:

I am a representative of the International Brotherhood of Electrical Workers. I participated in the final discussion with respect to wage amendments and amendment of the reopening clause, not in the preliminary. I am familiar only vaguely what took place in the preliminary stages of the discussion.

I first got in on these discussions at a meeting held on September 18, Wednesday night. My first entry into the picture consisted of attendance at a meeting which was held the night of September 18. It was a meeting of the plant department employees. A discussion was had on amendments and the wage increases agreed upon by the company and the committee of employees. They agreed to submit

further amendments that would be presented by an amendment committee.

The following day I accompanied Mr. Panzer and we met with the management. No amendments in particular were discussed on that day, September 19. The discussion did center around future amendments that would be submitted which would improve the wage increase that had been agreed to. Those amendments were not submitted to management in the form of writing; they developed through [fol. 49] discussion as a means of improvement of agreed wage increases. That was with respect to the wage increase for both plant and traffic departments.

I believe the date when those amendments which we had discussed were ratified by our plant and traffic groups was somewhere around September 25 at a specially called meeting held in the evening.

At that time there was no discussion with respect to approving the wage increases, but it was in regard to the paragraph providing for wage reopening as of March 1st which would become effective April 1st. At this meeting of September 25 they voted on the amendments. They balloted three times. The first ballot turned out 14 to 14. The second ballot was 14 to 14 and the third ballot was 13 in favor and 12 against as I recall due to the fact that some members had left the meeting prior to the third balloting.

The following day on September 26 we notified management that the plant people had accepted the amendment with respect to the reopening clause on wages.

With respect to the traffic employees I was not in on those negotiations at all. With respect to the amendment on the reopening clause a formal notice was sent to management from the Eau Claire office. I don't know the date. It was sent subsequent to this meeting of September 25 as a result [fol. 50] of the meeting with respect to ratifying the amendment on the part of the plant people. * * *

It has been the past practice that the committee has met with management and reached an agreement on the amendment. * * * There had been some discussion about the committee meeting with management without the presence of the business manager. The discussion took several forms and if I recall correctly the position of the local union was that at meetings the approval of the membership was satisfactory to the local union. The approval of the membership was satisfactory to the local union and as a result was ap-

proved in the proper manner, with the amendment that would provide for a reopening clause. There was some discussion among members that the agreements as discussed by management and the committee were illegal. I don't believe that I myself personally informed any of the members that it was illegal or void and the information as I recall informed the membership that it was just a matter of formality for the officers of the local union to meet with management for a satisfactory agreement on the amendments.

The past practice has been that the negotiating committee met with management and the result of those meetings, an agreement being reached between the committee and management, the agreement on amendments have been sub-
[fol. 51] mitted to the membership for their approval.

Cross-Examination.

By Mr. Skemp:

As far as our relationship with the La Crosse Telephone Company has been in the past I have considered that the agreement made by the committee for the telephone corporation as a binding agreement.

Raymond A. Panzer, being first duly sworn, testified:

Direct Examination.

By Mr. Martin:

I am business manager of Local B-953. Eau Claire is my residence. My position should be in general the representative of the International Brotherhood of Electrical Workers that handles labor relations with the I. B. E. W. for the La Crosse Telephone Corporation. I wish to show there the capacity of business manager is a salaried position and changes from time to time. I thought you inferred from the question had I handled the relations in the past.

As the representative of the I. B. E. W. at Eau Claire I would generally be the person handling any matters involving the union of the La Crosse Telephone corporation.
[fol. 52] There is a Mr. Elliott at Eau Claire with me. He is president of the local union. He has taken my place if I was away due to conventions or things of that sort. At such

times he has acted as business representative. Mr. Elliott informed me that two employees of the La Crosse Telephone Corporation had approached him with respect to these amendments to the existing agreement with the La Crosse Telephone Company. The query as Mr. Elliott informed me was with respect to immediate approval of agreement as negotiated by the committees. • • • Mr. Elliott informed me that he answered the employees inquiry to the effect that he himself did not wish to assume responsibility for their approval prior to consulting with me so there was no definite statement on his part with respect to accepting the agreement that the employees discussed with him on the part of the I. B. E. W.

I attended a meeting at La Crosse with respect to the plant people on September 18. I attended another on September 23. At the meeting of September 23 there was discussion respecting these amendments to the existing agreement. It assumed the nature of a vote of acceptance or rejection. That vote was 25 to 5 on the part of membership against accepting the amendments upon the recommendation of myself to reject as submitted unless modified with the reopening clause.

[fol. 53] I had discussed a reopening clause with our International vice president Boyle on September 19 or 20. If I remember right we had approached the company on this reopening clause on September 19. We agreed with the company on a proposed reopening clause about September 19 with a reopening date of May 1st or June 1st. The reopening date of June 1st was agreeable to me because in my opinion it was better than December 1, 1947.

Perhaps I am confused in the date of discussing the reopening clause with the company.

September 23 is the date of the meeting at which the proposed amendment was rejected. That proposed amendment was rejected upon my recommendation because of the lack of a proper date on our clause for wage reopening. There was a date submitted for wage reopening but the precise date was not set. At the September 23 meeting the amendment provided for wage review and the date was to be May 1, 1947 and such wages would be effective June 1st. That was the reason that I recommended rejection at the September 23 meeting. I was not satisfied with the May 1st and June 1st reopening dates.

Subsequent to that meeting there were discussions between me and the company with respect to changing the reopening dates. The discussions resulted in an advance of the date of reopening to March 1, 1947. Subsequent to [fol. 54] that a meeting was held on the evening of September 25 to consider approving or rejecting the amendments. The results of the ballot held at that meeting were substantially as Mr. Wetchen testified.

I believe I notified the company subsequent to this meeting that the members had ratified the proposed amendment. I notified the company by mailing to Mr. Samp of the Telephone Corporation copies of letters mailed to M. J. Boyle.

Subsequent to this meeting of September 25 the amendment was reduced to writing covering the change of the reopening date of the contract in regard to wages. * * * The amendment respecting wage reopening was not signed subsequent to the meeting of September 25 except by correspondence indicating it as being approved. Outside of that so far as I know no signatures have been attached to anything which contains a renewal clause as of March 1, 1947. * * *

We have approximately 85 members at La Crosse. Not every employee of the telephone corporation is a member of the I. B. E. W., Local B-953. To the best of my knowledge, all members in the plant and traffic departments are members of I. B. E. W. As far as I know they are dues-paying members. As far as I know temporary help may not be paying dues but so far as I know we assume all the other employees of the plant and traffic departments are paying dues. I don't have the records.

[fol. 55] Recross-examination.

By Mr. Previant:

The negotiations for the $30 a month increase and the return to the 40 hour week which had been agreed upon between the company and the union on September 3 was satisfactory. Further negotiations were for the purpose of coupling that amendment with the wage reopening clause. These meetings of September 23 and 25 related to the acceptability of a wage reopening clause having a termination date either as of May 1st which was the original proposal of the company or a termination date of March 1st which was the subsequent proposal of the company and accepted by

the union. As far as the wage or hours which had been entered into on September 3 that was satisfactory all the way through—the $30 increase and the return to the 40 hour week.

These agreements of August 31 and September 3rd which have been referred to were forwarded to me by the local committee membership.

Local B-963 is a local union located in Eau Claire. Its offices are in Eau Claire. The group in La Crosse is merely a branch of the union. It is not a separate independent local union located in La Crosse. I as the business manager of Local B-953 and the business manager for the group which is in La Crosse.

Exhibit #4 is a copy of the communication I received from the members of the Committee in the traffic division. It is dated August 31st.

[fol. 56] Exhibit #5 is a copy of the communication I received from the members of the committee in the plant department. It is dated September 3. On the second page of each of these exhibits there appears a notation "Approved by M. J. Boyle, Vice President, 6th District, IBEW" and also "Approved October 14, 1946, International Office, I. B. E. W., E. J. Brown, President." Those were not on the copies when I received them.

Exhibit 6 is a letter addressed by myself to M. J. Boyle. The original was signed by me. The letter refers to the fact that an original and five copies of the amended wage schedule are enclosed. That refers to Exhibit 4. The last exhibit is dated September 24. Under date of September 24 I sent the originals of exhibits 4 and 5 to Mr. Boyle. A copy of the letter of September 24 was sent to Mr. Samp. The enclosures referred to in this letter were the original and five copies of the amended wage schedule for the plant employees at La Crosse. That is Exhibit #5 dated September 3.

This letter of September 27 was sent two days after the meeting on September 25 after which the wage reopening date was approved. The reason why it was sent on the 27th when it was approved on the 25th was because of the trip to Eau Claire and then the actual typing of the copies of the original.

[fol. 57] Exhibit 8 is a letter addressed to myself informing me of the approval of the amended wage schedule. It is dated October 14. It is on the letterhead of the IBEW,

1200 15th Street N. W., Washington 5, D. C. It is addressed to Raymond A. Panzer, Business Manager, Local Union B-953, I. B. E. W., 17½ South Barstow Street, Eau Claire. It reads: "Dear Sir and Brother: We are herewith enclosing four copies each of the amendments to agreements now functioning between the La Crosse Telephone Corporation and Local Union B-953.

The amendments are dated respectfully September 3, 1946 and August 31, 1946. Your attention is called to the fact the copies enclosed contain only typed names of the signators to the agreement.

We are sure you will understand it is absolutely essential for this office to retain at least one originally signed copy of all documents to which International approval is appended.

In view of the fact you sent only one originally signed copy of amendments above identified, it has been necessary for us to retain them for I. O. P. files. With all good wishes, I am, sincerely yours, Ed. J. Brown, International President."

Attached to Exhibits 4 and 5 are the wage reopening clauses. As I testified on direct examination they were appended to the agreed-upon wage schedules after they had been approved.

[fol. 58] There is a difference in that the traffic department has the date May 1st and the plant department has the date March 1st. However, the agreement between me and the company was that the date of March 1st would apply to both traffic and plant.

With respect to sending these to the International office for approval the contracts are effective immediately upon agreement being reached with management and their effective date is not delayed until such time as their approval. They are subsequently reviewed by the International union. In the event the International has any objection to the agreement, the procedure is they will grant limited approval and point out those things that are desirable to change and ask us to make provision for such changes at the next reopening date. No effort is made to change the existing contract then. In my experience none of these agreements have ever been rejected by the International Union. Immediately upon agreement being concluded between the company and the union, both parties operate

under the agreement and enforce the agreement as of that date. • • •

In the event the Wisconsin Employment Relations Board did direct an election in this case it is the desire of our union to participate in such election in the plant and traffic departments that are combined as a unit in our present [fol. 59] agreement. We have not given too much consideration to whether we want them that way in an election or whether we want two separate units, one of the plant and one of the traffic.

If the board should determine an election to be conducted separately among the plant and traffic departments we desire to appear on the ballot for both. If the board should also conduct an election among office employees we do not desire to appear on that ballot.

Plant department employees are the maintenance and construction men, chiefly men employees. The traffic employees are chiefly girl operators—local and toll operators.

• • • I had a discussion with Mr. Samp with respect to the status of the agreement on wages. I believe that substantially it was to the effect that without a reopening clause they were not desirable. I stated to Mr. Samp I was not in agreement with the amendments or the agreements.

Chairman Gooding: Is there any dispute now about this situation: That Mr. Panzer prior to the meeting of September 23 objected to the amendment as it then stood and that amendment was turned down on September 23 by the employes. On September 25 another meeting was held of the Plant employes at which the amendment as then proposed was approved. Is there any dispute about that at all?

[fol. 60] Mr. Martin: No dispute on that.

• • • • • • •

Chairman Gooding: I understood your testimony that at the meeting of September 23 the agreement relating to the wage increase was rejected by the membership at the Plant meeting because of the fact that the re-opening clause was not satisfactory. Wasn't that your testimony?

A. Well, could we look back in the record?

Chairman Gooding: Well, is that the fact?

A. Well, if it is intended to be—well, substantially, yes.

38 39

Chairman Gooding: And isn't it a fact your minutes show that at that meeting the wage agreement proposed by the company and the committee—the local committee, was rejected because there wasn't a satisfactory re-opening clause?

A. Yes.

Chairman Gooding: And then at your meeting on September 25 the records show that the wage agreement was accepted at a meeting of the Plant group after several ballots?

A. That's right.

Chairman Gooding: And at the meeting of the 23rd you recommended against acceptance of it and——

A. Not because of the rates, merely because——

Chairman Gooding: Because of what?

A. The review date.

[fol. 61] E. B. Samp, having resumed the stand for further questioning, testified as follows:

Direct examination.

By Mr. Skemp:

Exhibit 9, is the list of the employees employed by the La Crosse Telephone Corporation as of September 30, 1946. It contains the various departments these employees are working in as of that date.

As vice president and general manager of the La Crosse Telephone Corporation I have the power to negotiate with the employees of my company and to bind the company by any contract I may enter. When I negotiated with the employees on September 3 and 4 and executed agreements relative to wage increases, I did so with the understanding I was binding the company—as of August 31st with the traffic department and September 4 with the plant department. In previous negotiations it has been customary to consider our agreements binding on the part of the company as of the date I signed the contract or document similar to those I signed on August 31, 1946 and September 4.

I have a concern with this jurisdictional fight that exists between these rival organizations. I do not feel there can be anything accomplished for the company or the employees through a jurisdictional fight; and we made definite and [fol. 62] firm agreements—there was a definite meeting of the minds at one time evidenced by the vote of employees

in their regular meeting for that purpose and the matter of the contract and the wages definitely considered closed. I cannot help but believe that sometime later on somebody came along and made some promises and started something that caused the dissension between the employees and we are in a very bad spot to operate anyway because of much dissension of the customers because of lack of facilities and all those things, and if we are going to have trouble and somebody creating trouble for us it is going to make it impossible where we are rendering service to approximately 15,000 subscribers and we cannot have anything that will cause dissension among the employees. We know from the time we negotiated the wage they were satisfied and it is certainly going to take the stand that we have a fully executed contract on September 4th and anything that transpired after that date was done under mutual agreement because the amendment was only executed on and worked on under mutual agreement which we have always done. After the contract is signed and an agreement reached, we have held with the employees and later on if they had an amendment or something that would improve working conditions, they should submit it and we would negotiate with them and amend it on re-opening the contract. [fol. 63] We have felt that we had a contract, the contract is extended to December first, 1947; that is the position we take.

The understanding has been there between the employer and the union that if there was something else that arose after December 1st we would still talk to the committee. We considered that an appendage or an agenda to the agreement.

Other than the reasons I have stated I feel it will destroy efficiency of operations. I have no reason to defend or offend the action of any union but I feel it is an inopportune time to create agitation that will cause dissension between the people. We have never had any trouble with the employees or the union. We have had a contract with the I. B. E. W. since 1937 and we have never had any particular dispute of any kind. I think the employees have every right to bargain under that contract—they are fully protected.

Outside of the fact we have had satisfactory relations we don't care which union it is. The relationships have been very satisfactory up to the present. • • •

Exhibit 3

(Amended Agreement Between the La Crosse Telephone Corporation and the International Brotherhood of Electrical Workers, Local No. B-953)

• • •

[fol. 64] This amended Agreement dated *1st* day of December, 1945, but actually fully consumated the *19th* day of *December*, 1945, and the provisions thereof when signed by the proper officers of the Company and the Local Union and approved by the President of the International Brotherhood of Electrical Workers becomes effective as of the *1st* day of *December*, 1945; for a period of one year, and shall continue in full force and effect from year to year thereafter, unless written notice is given by either party hereto to the other on or before ninety (90) days prior to the annual expiration date requesting that the agreement be amended or cancelled. If amendment is desired, the contents of the amendment shall be submitted by either party to the other on or before thirty (30) days prior to the termination date of any year in which said ninety (90) days notice has been given, however, changes mutually agreeable to the representatives of the parties hereto may be made at any time.

• • •

Exhibit 4

(Letter to Raymond A. Panzer dated August 31, 1946)

(Omitting formal parts)

In accordance with the provisions stipulated under Article 1, (method of negotiations) of the amended agreement between the La Crosse Telephone Corporation and the Inter-[fol. 65] national Brotherhood of Electrical Workers, Local No. B-953, the following listed committee representing the toll and local traffic department operating forces of the aforementioned union met with duly accredited representatives of the aforementioned corporation to discuss and negotiate wage scale increases for traffic personnel.

Committee: Rose Konop, Sigrid Braathen, Alice Olson, Annlouise Schmaltz.

• • • • • • •

These negotiations resulted in the following proposed additions, changes, and deletions to our present agreement and

were acceptable to both parties alike as evidence by the signatures of acceptance hereon.

Proposed Changes to Be Incorporated

Article V

"The following wage schedule to be made effective on September 1, 1946 and to continue in effect and in force until December 1, 1947."

Rate	Length of Service
$.62 per hour	0 through 6 months
.64 per hour	7 through 12 months
.67 per hour	13 through 24 months
.70 per hour	25 through 36 months
.72 per hour	37 through 48 months

[fol. 66]

.74 per hour	49 through 60 months
.77 per hour	After 60 months

• • • • • • •

"That the classification of Information Operator to be abolished and all personnel permanently assigned to performing such duties be classified as Junior Supervisor."

Senior Supervisor	$.10 in addition to base
Junior Supervisor	.05 in addition to base

• • • • • • •

"That the all night differential be changed to read—

All Night	Add 4 hrs. per week differential

• • • • • • •

It was clearly understood by the undersigned that the other provisions of the present agreement as it affects traffic personnel remains unchanged.

Very truly yours, s/ Annlouise Schmaltz, Shop Steward.

Accepted for the union, s/ Rose Konop.

Approved: By M. J. Boyle, Vice Pres., 6th Dist., IBEW, [fol. 67] (S.) Sigrid Braathen, Alice Olson, Annlouise Schmaltz.

Accepted for the company, (S.) E. B. Samp.

Exhibit 5

(Letter to Raymond A. Panzer dated September 3, 1946 from Pearl Pearson, Shop Steward)

(Omitting formal parts)

In accordance with the provisions stipulated under Article I, (method of negotiation), of the amended agreement between the La Crosse Telephone Corporation and the International Brotherhood of Electrical Workers, Local No. B-953, the following listed committee representing the plant department forces of the aforementioned union met with duly accredited representatives of the aforementioned corporation to discuss and negotiate wage scale increases for plant personnel.

Committee, Pearl Pearson, Philip Haag, Robert [fol. 68] Schultz, George Rief.

. . . . . .

These negotiations resulted in the following proposed additions, changes and deletions to our present agreement and were acceptable to both parties alike as evidenced by the signatures of acceptance hereon.

Proposed Changes to Be Incorporated

Article VI

It is understood that the wage schedule which is attached hereto and made a part of this letter is for a 40-hour week and that on September 1, 1946, the scheduled 44-hour week shall be discontinued.

The attached wage schedule to be made effective on September 1, 1946, and to continue in effect and in force until December 1, 1947.

. . . . . .

It was clearly understood by the undersigned that the other provisions of the present agreement as it affects plant personnel remains unchanged.

Very truly yours, Pearl Pearson, Shop Steward.

Accepted for the union, Pearl Pearson, Philip Haag, Rob- [fols. 69-70] ert Schultz, George Rief.

Accepted for the Company, E. B. Samp.

Approved: By M. J. Boyle, Vice President, 6th Dist., IBEW.

[fols. 71-72] IN SUPREME COURT OF WISCONSIN

Respondent's Appendix

[fol. 73] MOTION TO DISMISS APPEALS

[Caption omitted.]

Now comes the International Brotherhood of Electrical Workers, Local B-953, A. F. of L., by Padway, Goldberg & Previant, its attorneys, and upon the affidavit attached hereto, moves the Court to dismiss the Appeals in the above entitled cases because the question involved has become moot and a decision of the Court on the issues involved can have no practical effect nor be of any value to any of the parties hereto.

Dated, October 4, 1947.

Padway, Goldberg & Previant, Attorneys for International Brotherhood of Electrical Workers, Local B-953, A. F. of L.

[fol. 74] AFFIDAVIT OF DAVID PREVIANT

[Caption omitted.]

STATE OF WISCONSIN,
Milwaukee County, ss:

David Previant, first being duly sworn, on oath, deposes and says:

1. That he is one of the attorneys for the International Brotherhood of Electrical Workers, Local B-953, and makes this affidavit on its behalf being first duly authorized so to do. That this affidavit is in support of the Motion to Dismiss Appeal attached hereto, and that all matters hereinafter set forth are within his personal knowledge except as to those matters which are alleged on information and belief, and as to such matters affiant believes such facts to be true;

2. That after the certification of the Wisconsin Employment Relations Board which is the subject matter of this Appeal, the Telephone Guild of Wisconsin filed a complaint with the Wisconsin Employment Relations Board under date of March 7, 1947, in which it was charged and alleged that the Respondent, LaCrosse Telephone Corporation had

engaged in certain unfair labor practices in violation of the provisions of Chapter 111 of the Wisconsin Statutes, 1945, it being alleged, among other things, that the Company had failed to comply with the certification of the Wisconsin Employment Relations Board which is involved in [fol. 75] this appeal; that hearing was had on such complaint on April 22nd, 1947, but no decision was rendered thereunder by the Wisconsin Employment Relations Board pending receipt of the decision of the Circuit Court for LaCrosse County on the Petition for Review filed by the LaCrosse Telephone Corporation and by International Brotherhood of Electrical Workers Local B-953, A. F. of L., challenging the certification which is involved in this appeal, and that no further proceedings and no decision has as yet been rendered in such matter;

3. That in May, 1947, as affiant is informed and believes, the Telephone Guild of Wisconsin, after receipt of the decision and judgment appealed from herein, filed another Petition for Representation with the National Labor Relations Board at its Eighteenth Regional Office at Minneapolis, Minnesota, requesting such Board to hold an election in a unit described therein, which unit included classification of employees other than the units for which it was certified as a collective bargaining representative in an election conducted by the Wisconsin Employment Relations Board, and which is the subject of this appeal; that following the filing of such Petition, the National Labor Relations Board, through its agent, asserted jurisdiction in the matter and endeavored to persuade all parties concerned to agree to the holding of an election under the rules and regulations of the National Labor Relations Board, without hearing and without protest; that upon the failure of the parties to so agree the Regional Director of the [fol. 76] Eighteenth Region of the National Labor Relations Board recommended the dismissal of such Petition, and the Petition was thereafter dismissed;

4. That on June 8, 1947, the Telephone Guild of Wisconsin changed its name and affiliation and is now known as Communication Workers of America, Division No. 23, and there is, therefore, no longer in existence any labor union known under the name and style of Telephone Guild of Wisconsin, affiliated with the National Federation of Telephone Workers which is the name of the Union which

was certified as the exclusive bargaining representative in the proceedings before the Board which are now involved in this appeal;

5. That the aforesaid Communication Workers of America, Division No. 23, on August 4, 1947, filed a Petition for Certification of Representatives with the Eighteenth Region of the National Labor Relations Board located at Minneapolis, Minnesota, in which it asked to be designated as the bargaining agent for all employees of the LaCrosse Telephone Corporation excepting Executives and supervisory employees having the authority to hire, discharge, promote or discipline other employees or effectively recommend changes in the status of employees, which unit differs from that found appropriate by the Wisconsin Employment Relations Board in the instant case; that such Petition to the National Labor Relations Board was signed by Ray F. Dreyer as Secretary-Treasurer of the Communication Workers of America, Division No. 23, who is the same [fol. 77] Ray F. Dreyer who filed with the Wisconsin Employment Relations Board the Petition for Representation on behalf of the Telephone Guild of Wisconsin which gave rise to the proceedings herein involved;

6. That the contract involved in the instant proceedings has been in full force and effect since the date of its execution down to the present time and is subject to termination or modification commencing on December 1st, 1947, upon appropriate notice, and that under such contract the employees involved herein have received manifold benefits including wage increases granted subject to the wage reopening clause of such agreement in the early part of 1947;

7. That while the instant appeal was pending there has become effective what is commonly known as the Labor-Management Relations Act of 1947 (Public Law 101, 80th Congress), also known as the Taft-Hartley Act, under the terms and provisions of which the Wisconsin Employment Relations Board has no jurisdiction to conduct an election or to certify representatives as was done in the instant case.

David Previant.

Subscribed and sworn to before me this 4th day of October, A. D. 1947. June Donhauser, Notary Public, Milwaukee County, Wisconsin. My commission expires June 27, A. D. 1948.

[fol. 78] ARGUMENT IN SUPPORT OF MOTION TO DISMISS

A. The National Labor Relations Board Is Still Asserting Jurisdiction in This Matter

It appears from the affidavit, which has not been controverted, that another Petition was filed by the Telephone Guild with the National Labor Relations Board in May of 1947, in which the National Board was requested to hold an election in a unit which included classifications of employees other than the unit for which it was purportedly certified by the Wisconsin Board.

It further appears that in August, 1947, after the Telephone Guild of Wisconsin changed its name and affiliation, a Petition was again filed with the National Labor Relations Board which again asked that an election be conducted for certification as bargaining representative in a unit differing from that found appropriate by the Wisconsin Employment Relations Board in this case, and that such Petition is still pending before the Board.

All of this serves to underline the necessity for following a consistent rule of law with respect to jurisdiction of both the National Labor Relations Board and the Wisconsin Employment Relations Board as set forth in the Bethlehem case.

The contract involved in this case is subject to renewal or termination this year. The filing of the Petition with [fol. 79] the National Labor Relations Board in August, 1947, would undoubtedly eliminate any question arising with respect to application of the "contract-bar" rule. The only question involved would be that of unit. The determination by the National Labor Relations Board on the question of unit and an election conducted by the National Labor Relations Board would finally determine the issues involved and would result in the choice of a bargaining agent which choice would reflect the current desires of the employees and which bargaining agent could now negotiate a contract for the year 1948.

Under all of the circumstances surely the questions involved in this appeal are not only moot, but a decision in this case would be of no practical benefit or advantage to any of the parties, and would serve only to confuse the relationship existing, and place the employer and the labor unions involved in a position where they will not know

what their respective rights, duties and obligations are in the future.

B. The Union Certified by the Wisconsin Employment Relations Board Is No Longer in Existence

As pointed out in the affidavit, the Telephone Guild of Wisconsin which was purportedly certified as a bargaining agent in this case no longer has any existence under such name, and is now known as Communications Workers of America, Division No. 23.

[fol. 80] To reinstate a certification of a Union which has changed its name and affiliation would not lay to rest the questions involved in this case, and if such certification were to be amended would impose upon the employees a collective bargaining agent concerning which they had no opportunity to express their opinion.

The successor union has a Petition pending before the National Labor Relations Board. The processing of that Petition and further proceedings thereon should remain with the National Labor Relations Board uncomplicated by any determination of either the Wisconsin Employment Relations Board or this Court.

C. Significance of Passage of the Taft-Hartley Act While This Appeal Was Pending

The passage of the Taft-Hartley Act has made it impossible for the Wisconsin Employment Relations Board to require recognition of the bargaining agent which it has certified by further proceedings under the applicable unfair labor practice provisions of the Wisconsin Statutes. There is, therefore, no practical relief which can flow out of the present proceedings. (In connection with this Argument reference is made to the argument in the preceding brief.)

Conclusion

For all of the above reasons, It Is Respectfully Submitted that the question involved in this case has become moot, [fol. 81] and the decision of the Court on the issues involved can have no practical effect nor can be of any value to the parties hereto. The appeal, therefore, should be dismissed.

Respectfully submitted, Padway, Goldberg & Previant, Attorneys for Petitioner and Respondent, International Brotherhood of Electrical Workers, Local B-953, A. F. of L.

[fol. 82] [Caption omitted]

[fol. 83] In Circuit Court of La Crosse County

La Crosse Telephone Corporation, Plaintiff and Petitioner,

v.

Wisconsin Employment Relations Board, L. E. Gooding, Henry Rule and J. E. Fitzgibbons, Defendants and Respondents.

Notice of Appeal—Filed in Supreme Court June 9, 1947

To: Padway, Goldberg & Previant, 511 Warner Theatre Building, Milwaukee 3, Wisconsin, Attorneys for Int. Brotherhood of Elec. Workers, etc.

Hale, Skemp & Nietsch, 515 State Bank Bldg., La Crosse, Wisconsin, Attorneys for Petitioner.

Donald Martin, 4608 W. Crawford Ave., Milwaukee 14, Wisconsin. Attorney for Telephone Guild of Wisconsin.

Clerk of Circuit Court, La Crosse, Wisconsin.

Please take notice that the above named respondent, Wisconsin Employment Relations Board appeals to the Supreme Court of the State of Wisconsin from the judgment of the Circuit Court of La Crosse County, entered in the office of the clerk of said court on the 5th day of May, 1947 reversing and setting aside the certification of the Wisconsin Employment Relations Board entered January 14, 1947 and from the whole of such judgment.

Dated at Madison, Wisconsin, this 21st day of May, 1947.

John E. Martin, Attorney General; Stewart G. Honeck, Deputy Attorney General; Beatrice Lampert, Assistant Attorney General, Attorneys for Wisconsin Employment Relations Board.

[File endorsement omitted.]

[fol. 84] [Title omitted]

Admission of Service

Service of copy of notice of appeal to Supreme Court of Wisconsin Employment Relations Board in the above entitled matter is hereby admitted this 22nd day of May, 1947.

Padway, Goldberg & Previant.

[File endorsement omitted.]

[fol. 85] [Title omitted]

ADMISSION OF SERVICE

Service of copy of notice of appeal to Supreme Court of Wisconsin Employment Relations Board in the above entitled matter is hereby admitted this 21 day of May, 1947.

Hale, Skemp & Nietsch.

[File endorsement omitted.]

[fol. 86] [Title omitted]

ADMISSION OF SERVICE

Service of copy of notice of appeal to Supreme Court of Wisconsin Employment Relations Board in the above entitled matter is hereby admitted this 27th day of May, 1947.

Donald J. Martin.

[File endorsement omitted.]

[fol. 87] [Title omitted]

ADMISSION OF SERVICE

Service of copy of notice of appeal to Supreme Court of Wisconsin Employment Relations Board in the above entitled matter is hereby admitted this 22nd day of May, 1947.

L. G. Schaefer.

[File endorsement omitted.]

[fol. 88] IN CIRCUIT COURT OF LA CROSSE COUNTY

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL B-953, A. F. OF L., Petitioner,

v.

WISCONSIN EMPLOYMENT RELATIONS BOARD, L. E. GOODING, Henry Rule and J. E. Fitzgibbon, as Members of the Wisconsin Employment Relations Board, Respondents.

NOTICE OF APPEAL—Filed in Supreme Court June 9, 1947

To: Padway, Goldberg & Previant, 511 Warner Theatre Building, Milwaukee 3, Wisconsin, Attorneys for Petitioner. Hale, Skemp & Nietsch, 515 State Bank Bldg., La Crosse, Wisconsin, Attorneys for La Crosse Telephone Co.

Donald Martin, 4608 W. Crawford Ave., Milwaukee 14, Wisconsin. Attorney for Telephone Guild of Wisconsin. Clerk of Circuit Court, La Crosse, Wisconsin.

Please take notice that the above named respondent, Wisconsin Employment Relations Board appeals from the judgment of the Circuit Court of La Crosse County, entered in the office of the clerk of said court on the 9th day of May, 1947 reversing and setting aside the certification of the Wisconsin Employment Relations Board entered January 14, 1947 and from the whole of such judgment.

Dated at Madison, Wisconsin, this 17th day of May, 1947.

John E. Martin, Attorney General; Stewart G. Honeck, Deputy Attorney General; Beatrice Lampert, Assistant Attorney General.

[File endorsement omitted.]

[fol. 89] [Title omitted]

ADMISSION OF SERVICE

Service of copy of notice of appeal of Wisconsin Employment Relations Board in the above entitled matter is hereby admitted this 19th day of May, 1947.

Padway, Goldberg & Previant.

[File endorsement omitted.]

[fol. 90] [Title omitted]

ADMISSION OF SERVICE

Service of copy of notice of appeal of Wisconsin Employment Relations Board in the above entitled matter is hereby admitted this 19 day of May, 1947.

Hale, Skemp & Nietsch.

[File endorsement omitted.]

[fol. 91] [Title omitted]

ADMISSION OF SERVICE

Service of copy of notice of appeal of Wisconsin Employment Relations Board in the above entitled matter is hereby admitted this 21st day of May, 1947.

Donald J. Martin.

[File endorsement omitted.]

[fols. 92-93] [Title omitted]

ADMISSION OF SERVICE

Service of copy of notice of appeal of Wisconsin Employment Relations Board in the above entitled matter is hereby admitted this 19th day of May, 1947.

L. G. Schaefer, Clerk of Circuit Court.

[File endorsement omitted.]

[fol. 94] [File endorsement omitted]

IN SUPREME COURT OF WISCONSIN

Nos. 60 & 61

[Titles omitted]

STIPULATION TO CONSOLIDATE—Filed September 2, 1947

Whereas the above entitled appeals involve an identical certification of representatives made by the Wisconsin Employment Relations Board pursuant to sec. 111.05 of the statutes, and

Whereas said appeals involve identical issues of law, Now, Therefore,

It Is Stipulated by and between the parties, subject to the approval of the court, through their respective attorneys that said appeals may be consolidated and treated [fol. 95] as a single case before the Supreme Court for purposes of briefing, argument, consideration and decision.

Dated at Madison, Wisconsin, this 2nd day of September, 1947.

Beatrice Lampert, Attorney for the Appellant, Wisconsin Employment Relations Board; Hale Skemp & Nietsch, Attorney for the respondent, La Crosse Telephone Corporation; Padway, Goldberg & Previant, Attorney for the respondent, International Brotherhood of Electrical Workers, Local B-953, A. F. of L.; Donald J. Martin, Attorney for the respondent, Telephone Guild of Wisconsin.

[fols. 96-97] In Supreme Court of Wisconsin

[Titles omitted]

Minute Entry—November 18, 1947

And now at this day came the parties herein, by their attorneys, and these causes having been argued by Beatrice Lampert, Assistant Attorney General, for the said appellants, by Donald J. Martin, Esq., for the said Communications Workers of America, by David Previant, Esq., for the said respondent International Brotherhood of Electrical Workers, and by Thomas S. Skemp, Esq., for the respondent La Crosse Telephone Corporation, and submitted, and the court not being now sufficiently advised of and concerning its decision herein, took time to consider of its opinion.

[fol. 98] [File endorsement omitted]

In Supreme Court of Wisconsin

August Term 1947. Nos. 60, 61

No. 60

La Crosse Telephone Corporation, Respondent,

vs.

Wisconsin Employment Relations Board, et al., Appellants

No. 61

International Brotherhood of Electrical Workers, Local B-953, A. F. of L., Respondent,

vs.

Wisconsin Employment Relations Board, et al., Appellants

Appeals from judgments of the circuit court for La Crosse county. R. S. Cowie, circuit judge. *Reversed.*

Separate actions were brought in the circuit court by petitions of the La Crosse Telephone Corporation and the International Brotherhood of Electrical Workers, Local B-953, A. F. of L., respectively, for the review, under sec. 111.07 (8), Stats., of a certification made by the Wisconsin

Employment Relations Board of the election of the Telephone Guild of Wisconsin as the bargaining representative for certain employees of the Telephone Corporation. The circuit court reversed and set aside the certification, and from judgments entered accordingly the Wisconsin Employment Relations Board appeal.

OPINION—Filed December 23, 1947

[fol. 99] FRITZ, J.

The certification made by the Wisconsin Employment Relations Board (hereinafter called State Board) of the election of the Telephone Guild of Wisconsin (herein called Guild) as the bargaining representative for certain employees of the La Crosse Telephone Corporation (herein called Employer) was reversed and set aside by the circuit court on the grounds that the Employer is engaged in interstate commerce, and that the decision in *Bethlehem Steel Company v. New York State Labor Relations Board*, 330 U. S. 767, 67 Sup. Ct. 1026, 91 L. ed. 1054, leaves no constitutional authority in the State Board to determine collective bargaining units and conduct collective bargaining elections among employees or employers engaged in such commerce.

The principal issue on this appeal is, as stated in the State Board's brief,—

"Does the National Labor Relations Act preclude the Wisconsin Employment Relations Board from conducting an election to determine the desires of employees of the local (La Crosse) telephone corporation with respect to a collective bargaining representative, irrespective of whether the National Labor Relations Board has ever taken any action involving the company and its employees, and irrespective of whether the action of the state board contravenes any substantive provisions of the national act or any fixed policy of the national board?"

The Employer is a Wisconsin corporation and all its employees are employed in La Crosse county in this state in its operation of a local telephone service within the La Crosse area, and rendering in connection therewith such intrastate and interstate long distance service as is incidental thereto. In and for some time prior to December 1945, the employees in its *traffic* and its *plant* departments (which included all excepting its office workers) were repre-

sented for collective bargaining purposes by the International Brotherhood of Electrical Workers, Local B-953, A. F. of L. (herein called Local B-953). On December 19, [fol. 100] 1945, Local B-953 and the Employer entered into a collective bargaining agreement which was to continue in effect until December 1, 1946, and from year to year thereafter unless either party should give written notice ninety days prior to the annual expiration date requesting that the agreement be amended or cancelled, and if an amendment was desired the contents thereof should be submitted by such party to the other on or before thirty days prior to the termination date of any year in which the ninety day notice was given, but that changes mutually agreeable may be made at any time; and in said agreement a method of negotiation for the settlement of differences was also provided under which the Employer and Local B-953 agreed to meet and deal with each other through their duly accredited officers and committees. Local B-953 in a letter dated August 28, 1946, and addressed to E. B. Samp, Employer's vice president and manager, stated that, "To meet the notice requirements of our agreement, we wish to notify you we desire to amend the agreement." Pursuant thereto negotiations concerning a new wage schedule were commenced between Samp and a committee of the traffic department employees on August 31, 1946, and were likewise commenced between Samp and a plant department committee on September 3, 1946. Wage schedules for each department were agreed upon in those negotiations and were incorporated in a letter signed by Samp and by members of Local B-953 committees and addressed to Raymond A. Panzer at Eau Claire, who was business manager of Local B-953. In the letter in relation to the plant department employees it was stated,—

"These negotiations resulted in the following proposed additions, changes and deletions to our present agreement and were acceptable to both parties alike as evidenced by the signatures of acceptance hereon. * * * It was clearly understood by the undersigned that the other provisions of the present agreement as it affects traffic personnel remain unchanged."

[fol. 101] However, in addition, representatives of Local B-953, and the Employer's officials on September 19 or 20, 1946, began negotiations for a provision which also was to

be incorporated in each of the proposed contracts respecting the date when it might be opened for new wage negotiations; and at a meeting of Local B-953 on September 23, the proposed wage schedule amendments negotiated by its committees were rejected by it on the recommendation of its business manager because of the lack of a satisfactory reopening clause as to when the wage agreements could be modified under such a clause. Subsequently said business manager and Employer's officials tentatively agreed upon a date when the contract might be so reopened but, instead of accepting that date the members of Local B-953 on September 25, 1946, finally voted in favor of another date, March 1, as the reopening date. The Employer was informed of Local B-953's ratification of this amendment by a letter mailed from Eau Claire on September 27, and provisions respecting said reopening date were subsequently added to the above stated letters containing the proposed wage schedules, and thereafter a new contract was drafted for the year beginning December 1, 1946. But it had not been signed by the Employer's officials and the officials of Local B-953 when, on October 18, 1946, the State Board conducted a hearing in proceedings which resulted ultimately in the election and certification of the Guild as the bargaining representative of the plant and traffic departments' employees of the Employer.

Meanwhile, during the period of the above stated negotiations the Guild, on September 20, 1946, filed with the National Labor Relations Board (herein called the National Board) a petition to have the Guild certified as the bargaining representative of the Employer's employees, who were theretofore represented by Local B-953; and the Employer [fol. 102] was notified by a letter from the National Board's office in Minneapolis, dated September 24, 1946, of the filing of the Guild's petition. But there is nothing in the record herein to indicate that the National Board ever took jurisdiction of or pursuant to said petition; and on October 8, 1946, the Guild filed with the National Board a request to approve the withdrawal thereof. Then on that date the Guild filed with the State Board a petition for the holding of an election by all of the Employer's employees to determine what if any representation they desired for the purpose of collective bargaining. Pursuant to this petition the State Board conducted a hearing on October 18, 1946, and on November 27, 1946, filed its decision determining,—

in connection with finding the facts stated above as to the negotiations in 1946 between the Employer and Local B-953, and its rejection of the proposed amendments to the collective bargaining contract because there was no provision therein specifying the reopening date for reviewing the wage question, and there was no determination by Local B-953 as to such date until at the meeting of its members on September 25, as to which the Employer was notified on September 26 or 27,—that until the Employer was given such notice,—"no binding agreement had been entered into between the Employer and the union"; and that "There was, therefore, no binding agreement when the company was notified that another union claimed to represent a majority of the employees that the E. B. E. W. proposed to represent, and a contract entered into subsequent to the receipt of such notice cannot operate as a bar to an election."

Upon the matters thus determined, the State Board directed the conduct of the election in question. In its direction the Board gave the employees in each department (i. e., the plant, traffic and likewise the office departments) [fol. 103] the opportunity to determine whether or not they desire to constitute themselves separate units; and directed that for the voting by the plant and traffic departments employees both the Guild and Local B-953 shall appear on the ballot, while for the office employees,—because of the fact that Local B-953 does not desire to represent them,—the only question submitted would be whether they desired to be represented by the Guild or not. At the election conducted by the State Board on November 27, 1946, the majority of the plant and traffic departments workers voted to constitute a single bargaining unit, which is the same group of employees which Local B-953 was bargaining for in the past and desired to continue to represent. By those employees, 91 votes were cast for the Guild, and 14 in favor of Local B-953, as their representative. The office employees voted not to be included in the same bargaining unit as the other departments and not to be represented by any union. Pursuant to that election, the State Board on January 14, 1947, certified that the Guild was elected by the employees of the Employer (excepting its executive, supervisory and office employees) as their bargaining representative; and this certification Local B-953 and likewise

the Employer petitioned to have reversed and set aside by the circuit court.

There is nothing in the record of the proceedings before the State Board or in the circuit court to indicate that the National Board has ever in any manner exercised any of its powers or discretion or otherwise taken jurisdiction of any question or phase of the Employer's or its employees' industrial relations. Although a petition that the Guild be certified as the bargaining representative of the Employer's employees had been filed by the Guild with the National Board on September 20, 1946, that Board apparently never [fol. 104] took jurisdiction pursuant thereto, and the petition was withdrawn at the request of the Guild before it filed, on October 8, 1946, its petition with the State Board for the latter's direction to conduct and hold such an election.*

In *International B. of E. W. v. Wisconsin E. R. Board*, 245 Wis. 532, 15 N. W. (2) 823, we pointed out, in line with the federal courts' rulings, that the National Board is not required to accept jurisdiction or exercise its powers on every petition or complaint filed with it. As we stated in that case,—

(p. 539) "When the National Labor Relations Board has acted in a particular case, the question of whether there is a conflict between the two jurisdictions is to be determined of course by the provisions of these acts. * * * If no proceeding is had under the National Labor Relations Act, no conflict of jurisdiction can arise. This matter was fully discussed in the Rueping L. Co. Case already referred to. *The National Labor Relations Board having never taken jurisdiction to certify the name of a bargaining agent, the state board could entertain proceedings relating to violations of state law. In so doing there was under such circumstance no conflict of jurisdiction.* Not every labor dis-

* Apparently (as is stated in an affidavit filed by counsel for Local B-953 on its motion to dismiss these appeals on the ground that the question involved therein has become moot) the Guild in May 1947 filed another petition with the National Board requesting said Board to hold an election to determine a bargaining representative for the Employer's employees, and that petition was dismissed on the recommendation of the Board's regional director.

pute arises to such dignity that it impedes and obstructs interstate commerce although the employer may be engaged in what has been defined as interstate commerce."

In *Public S. E. Union* v. *Wisconsin E. R. Board*, 246 Wis. 190, 194, 16 N. W. (2) 823, we said,—

"The appellants contend—(1) That the board had no jurisdiction to issue an order restraining the president of the union from acting or attempting to act as a representative in any capacity for the employees of the company; suspending the right of the union to act as a collective bargaining representative or as a representative in any capacity for the employees of the company and suspending the right of the officers of the union to serve as a representative in any capacity of the employees of the company. • • • We have considered the matter of conflict between Wisconsin and federal law in a number of other cases and have held that where the National Labor Relations Board has not taken jurisdiction in the controversy, no conflict exists."

[fol. 105] See also *Allen-Bradley Local 1111* v. *Wisconsin E. R. Board*, 315 U. S. 740, 86 L. ed. 1154 (237 Wis. 164, 295 N. W. 791).

And there is nothing stated in our decision in *International Union* v. *Wisconsin E. R. Board*, 250 Wis. 550, 27 N. W. (2) 875, which should be deemed to warrant concluding that the State Board's action in ordering the conduct and certifying the result of the election in question herein was not acting within its jurisdiction and powers. As we stated then, in duly applying and giving effect to the decision in *Bethlehem Steel Co.* v. *New York State Labor Relations Board, supra*—(p. 567)

"What the court held was that the National Labor Relations Board had exercised the jurisdiction delegated to it under the federal act by declining to designate the foremen as a bargaining unit. The declination was an exercise of its jurisdiction, just as much as granting it would have been. The jurisdiction vested in the National Labor Relations Board was to determine whether it would designate the foreman as a bargaining unit, and it exercised jurisdiction when it denied the application. No such situation exists in the instant case as was involved in the Bethlehem Steel Co.

Case, supra. In the first place, no application has been made to the National Labor Relations Board to exercise any jurisdiction of the labor dispute here involved. *The National Labor Relations Board not having exercised any jurisdiction* of such labor dispute *the state board may exercise jurisdiction* of it. *No conflict is here involved.* There was a direct conflict in the Bethlehem Steel Co. Case. The National Labor Relations Board had determined that foremen could not form a unit for collective bargaining and the state board said that they could and formed a unit. The National Labor Relations Board's decision barred the state board from taking any action at all."

The State Board's action, which is under consideration on these appeals, does not involve the exercise of its discretion nor the formulation of any policy which does or could vary from those of the National Labor Relations Act. The mere fact-finding procedure of the State Board in the ascertainment of the facts, and its thereupon ordering and conducting an election and certifying the result thereof, constitutes action in merely its ministerial capacity (*United R. & W. D. S. E. of A.* v. *Wisconsin E. R. Board*, 245 Wis. 636, 641, 15 N. W. (2) 844; *J. F. Quest Foundry Co.* [fol. 106] v. *International M. & F. W. Union*, 216 Minn. 436, 441, 13 N. W. (2) 32; *National Labor Relations Board* v. *Botany Worsted Mills*, 133 Fed. (2) 876, 882); and does not deny to the National Board or interfere with its right to exercise its discretion and powers if it should ever conclude to exercise its jurisdiction and powers in that respect to determine the appropriate bargaining representative or unit of representation. But, although the National Board's power over that subject is paramount, it is not exclusive in such a case as we have here, until the federal power is exercised or jurisdiction thereto is taken as to particular employees.

There cannot be sustained the contention of the Employer and Local B-953 that the State Board erred in determining that no new binding contract had been finally entered into between them in 1946 prior to the Employer's receiving notice that another union claimed to represent a majority of the employees whom Local B-953 had been representing. Although in the course of the negotiations between Samp and committees of employees in the traffic and also the plant departments they had come to agree, by September

19 or 20, as to the wage schedules and working hours, no new contract had been completely written or signed by the Employer and by Local B-953, as the bargaining agent, because, as stated above, they had not been able, in their negotiations, to agree upon the date at which the proposed contract might be reopened for new wage negotiations. After the amended wage schedule and working hours, which had been negotiated by Samp and the employee committees, were rejected by the employees' action at their Local B-953's meeting on September 23, because of the lack of a mutually satisfactory reopening provision, the Employer was not informed until by a letter mailed from Eau Claire on September 27, that the union membership finally voted to set March 1 as the date on which negotiations as to [fol. 107] wages might be reopened. But a new contract for the year beginning December 1, 1946, was not drafted until some time after September 27, 1946, and apparently no such contract had been executed by the officials of Local B-953 or the Employer when, on October 8, 1946, the Guild filed its petition with the State Board for an election of the employees to determine what collective bargaining representation they desired, or even when the Board filed its direction for the holding of such election.

Neither can there be sustained the Employer's and Local B-953's contention that the results of the balloting at the election did not provide sufficient basis for the State Board's certification that the Guild had been selected as the majority representative of the employees in the traffic and the plant departments, and that the Guild's petition be dismissed in so far as it related to the office employees. As claimed by the State Board, the results of the votes cast appear to be to the following effect. Of the 114 employees in the traffic department who were eligible to vote, 52 voted against having the employees of that department bargaining collectively as a separate unit, and 13 in favor thereof; and 64 voted for the Guild and 1 for Local B-953 as their bargaining representative. Of 40 employees in the plant department eligible to vote, 25 voted against a separate bargaining unit, and 12 in favor thereof; and 27 voted for the Guild and 13 for Local B-953 as their representative. Consequently of the 145 employees who voted that they desired to bargain together, 91 desired to be represented by the Guild, and 14 by Local B-953. Of 31 office employees

eligible to vote, 10 voted in favor of a separate unit, and 18 voted against it or having any collective bargaining representation. The vote as to whether the employees of the [fol. 108] traffic department desired to bargain as a separate unit, and as to whether the employees of the plant department desired to bargain as a separate unit was decidedly against each of these departments bargaining as a separate unit. The alternative thereto was not necessarily a unit which would include office employees. No question submitted to the employees on their ballots was contingent upon the result of any other, either in wording or in spirit. The votes of the employees in the traffic and plant departments as to who should constitute their representative for collective bargaining purposes were unconditional; and of the 105 employees in those departments who voted that they desired to bargain as a unit, 91 voted unconditionally to be represented by the Guild. The State Board had published advance notices of the election with sample ballots, but neither Local B-953 nor any other party made any request of the Board prior to the election that it be conducted in a different manner. If there were any objection to the manner in which the Board proposed to hold the election, the objection should have been submitted to the Board, and as none was so submitted, it cannot be raised for the first time upon review in court. As is provided in sec. 111.07 (7), Stats., —:

"No objection that has not been urged before the board shall be considered by the court unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances."

It follows that the judgments under review must be reversed and the causes remanded with directions to enter judgments sustaining the State Board's direction of the election and its certification of the results thereof.

By the Court: Judgments reversed in each case, and causes remanded with directions to enter judgments in accordance with this opinion.

[fol. 109] IN SUPREME COURT OF WISCONSIN

LA CROSSE TELEPHONE CORPORATION, Respondent,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD, L. E. GOODING, HENRY RULE and J. E. FITZGIBBON, Appellants.

LaCrosse Circuit Court. Opinion by Justice Fritz

JUDGMENT—December 23, 1947

This cause came on to be heard on appeal from the judgment of the Circuit Court of La Crosse County and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the Circuit Court of La Crosse County, in this cause, be, and the same is hereby, reversed.

And that this cause be, and the same is hereby, remanded to the said Circuit Court with directions to enter judgment in accordance with the opinion.

Justice Fowler took no part.

[fol. 110] IN SUPREME COURT OF WISCONSIN

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL B-953, A. F. OF L., Respondent,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD, L. E. GOODING, Henry Rule and J. E. Fitzgiboon, as Members of the Wisconsin Employment Relations Board, Appellants.

LaCrosse Circuit Court. Opinion by Justice Fritz

JUDGMENT—December 23, 1947

This cause came on to be heard on appeal from the judgment of the Circuit Court of La Crosse County and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the Circuit Court of La Crosse County, in this cause, be, and the same is hereby, reversed.

And that this cause be, and the same is hereby, remanded to the said Circuit Court with directions to enter judgment in accordance with the opinion.

Justice Fowler took no part.

[fol. 111] [File endorsement omitted]

IN SUPREME COURT OF WISCONSIN

No. 60 and 61

[Titles omitted]

PETITION FOR APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed February 25, 1948

To the Honorable Marvin B. Rosenberry, Chief Justice of the Supreme Court of Wisconsin:

The LaCrosse Telephone Corporation, Petitioner and Respondent, feeling itself aggrieved by the decree rendered and entered in the above entitled cause on the 23rd day of December, 1946, hereby appeals from the said decree to the Supreme Court of the United States for the reasons set forth in the assignment of errors filed herein, and prays that its appeal be allowed, and that citation be issued as provided by law, and that a transcript of the record, proceedings, and documents upon which said decree was based, duly authenticated, be sent to the Supreme Court of the United States under the rules of such court in such cases made and provided.

[fol. 112] And your petitioner further prays that the proper order relating to the required security to be required of it be made.

T. H. Skemp, I. H. Ile, Attorneys for Petitioner, LaCrosse Telephone Corporation, 515 State Bank Building, LaCrosse, Wisconsin.

[fol. 113] [File endorsement omitted]

IN SUPREME COURT OF WISCONSIN

No. 60 and 61

[Titles omitted]

ASSIGNMENT OF ERRORS—Filed February 25, 1948

The LaCrosse Telephone Corporation, petitioner and respondent above named, files the following assignment of errors upon which it will rely in the prosecution of the Appeal to the Supreme Court of the United States from the decree of the Supreme Court of the State of Wisconsin entered on the 23rd day of December, 1947:

1. The Supreme Court of Wisconsin erred in reversing and setting aside the decision of the Circuit Court for La Crosse County, Wisconsin, made and entered in this cause on May 5, 1947, and adjudging that a certification made by the Wisconsin Employment Relations Board of the election of the Telephone Guild of Wisconsin as a bargaining representative for employes of the Telephone Corporation was valid and within the jurisdiction of the Wisconsin Employment Relations Board under the Wisconsin Employment Peace Act.

[fol. 114] 2. The Supreme Court of Wisconsin erred in holding that under the provisions of Section 8 of Article I and Paragraph Two of Article VI of the Constitution of the United States, the Wisconsin Employment Peace Act can legally be applied to the issue of determining the bargaining representative for employees where the employer is engaged in interstate commerce;

3. The Supreme Court of the State of Wisconsin erred in holding that under the provisions of Section 8 Article I and Paragraph Two of Article VI of the Constitution of the United States, the Wisconsin Employment Relations Board has jurisdiction to determine the contract rights of employer and employee where the employer is engaged in interstate commerce.

4. The Supreme Court of Wisconsin erred in not applying the decision of the Supreme Court of the United States in the case of the Bethlehem Steel Company et al. vs. New

York State Labor Relations Board and Allegheny Ludlum Steel Corporation vs. William J. Kelly et al., 330 U. S. 767, 67 Sup. Ct. 1026, 91 L. Ed 1054.

5. The Supreme Court of Wisconsin erred in holding that the Wisconsin Employment Relations Board has jurisdiction over employer-employee relations of the LaCrosse Telephone Corporation arising out of the question of choice of units of representation for bargaining purposes, irrespective of whether the National Labor Relations Board has ever taken any action involving the company and its employes, and irrespective of whether the action of the State Board contravenes any substantive provisions of the National Act or any fixed policy of the National Board.

Wherefore the LaCrosse Telephone Corporation, respondent above named, prays that the said decree be reversed, and for such other and further relief as to the court may seem just and proper.

Dated this 25 day of February, 1948.

T. H. Skemp, I. H. Hale, Attorneys for Respondent, LaCrosse Telephone Corporation, 515 State Bank Building, LaCrosse, Wisconsin.

[fol. 115] [File endorsement omitted]

IN SUPREME COURT OF WISCONSIN

No. 60 and 61

[Titles omitted]

ORDER ALLOWING APPEAL—Filed February 25, 1948

The La Crosse Telephone Corporation, petitioner and respondent, herein, having filed a petition for appeal to the Supreme Court of the United States from the judgment entered herein on the 23rd day of December, 1947, and having filed its assignment of errors,

Wherefore, it is ordered:

1. That the appeal herein to the Supreme Court of the United States be and it is hereby allowed;

2. That the bond as filed is sufficient for such appeal from this court and the rules of the Supreme Court of the United States.

Dated this 25 day of February, 1948.

By the Court, Marion B. Rosenberry, Chief Justice.

[fol. 116] [File endorsement omitted]

IN SUPREME COURT OF WISCONSIN

No. 60 and 61

[Titles omitted]

STIPULATION AS TO APPEAL BOND—Filed February 25, 1948

Whereas the parties hereto have stipulated that there be one record on the appeal of the above actions to the Supreme Court of the United States and that the appeals in said actions may be consolidated and treated as a single case before the Supreme Court of the United States for the purposes of briefing, argument, consideration and decision, and

Whereas said appeals do not involve money or property judgments but the validity of a ministerial function by a state board,

Wherefore, it is stipulated as follows:

1. That there be no supersedeas bond in either of said actions;

• • • • • • •

3. That the Chief Justice of the Supreme Court of the [fol. 117] State of Wisconsin allow such appeal, enter an order of such allowance, and certify that satisfactory security for said costs have been provided.

Dated this 25 day of February, 1948.

John E. Martin, Attorney General of the State of Wisconsin; Stewart G. Honeck, Deputy Attorney General; Beatrice Lampert, Assistant Attorney General; T. H. Skemp, I. H. Hale, Attorneys for LaCrosse Telephone Corp., Petitioner and Respondent, 515 State Bank Building, LaCrosse, Wisconsin; Louis Sherman, General Counsel of IBEW, Pet. and Res., 1200 15th Street N.W., Washington, 5, D. C.

[fols. 118-119] Bond on appeal for $500.00 approved and filed Feb. 25, 1948, omitted in printing.

[fols. 120-121] Citation in usual form showing service on John E. Martin, filed Feb. 25, 1948, omitted in printing.

[fol. 122] [File endorsement omitted]

IN THE SUPREME COURT OF WISCONSIN

Nos. 60 and 61

[Titles omitted]

PETITION FOR APPEAL, ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL—Filed February 25, 1948

To the Honorable Marvin B. Rosenberry, Chief Justice of the Supreme Court of Wisconsin:

Your Petitioner, Local Union No. 953, of the International Brotherhood of Electrical Workers (A. F. of L.), Respondent in the above entitled cause (hereinafter called the Petitioner) respectfully shows by this petition, and the Assignment of Errors filed herewith, that in the records, proceedings and decision of this Court in the above entitled cause, this Court being the highest Court of the State of Wiscon-

sin in which a decision could be had in said cause, and said decision being a final judgment, manifest error has occurred, greatly to the damage of Petitioner, in that, as appears in said record and proceedings, there was drawn in question the validify of a statute of the State of Wisconsin on the ground of its being repugnant to the Constitution or laws of the United States, and the final judgment of this Court is in favor of the validity of said statute, which statute is the Wisconsin Employment Peace Act, Chapter 111, Subchapter I of the Wisconsin Statutes, as amended, Sec. 111.01 to 111.19.

Wherefore, your Petitioner respectfully prays that it be permitted to take an appeal to the Supreme Court of the United States from the final judgment of this Court, made and entered in the above entitled cause on December 23, 1947 for the reasons specified in the Assignment of Errors accompanying this petition, that a proper order be made with regard to the appeal bond to be given by the Petitioner, [fol. 123] that a citation issue as provided by law, and that the material part of the record, proceedings and papers upon which said final judgment was based, duly authenticated, be sent to the Supreme Court of the United States in accordance with the rules in such case made and provided.

Assignment of Errors

Your Petitioner complains that the Supreme Court of Wisconsin committed manifest error to the prejudice of your Petitioner in the above entitled cause and assigns the following errors in the record and proceedings herein upon which it will rely in its appeal to the Supreme Court of the United States (each numbered paragraph being a separate assignment of error.

I. The Supreme Court of Wisconsin erred in rejecting the contention of your Petitioner that the question or controversy over which the Wisconsin Employment Relations Board sought to assert jurisdiction under the Wisconsin Employment Peace Act in the proceeding before said Board in which was issued the certification of a bargaining representative is a question or controversy exclusively within the jurisdiction of the National Labor Relations Board under the National Labor Relations Act and is not within the jurisdiction of the Wis-

consin Employment Relations Board under the Wisconsin Employment Peace Act.

II. The Supreme Court of Wisconsin erred in failing and refusing to hold that under the provisions of section 8 of Article I and clause 2 of Article VI of the Constitution of the United States the Wisconsin Employment Peace Act cannot have any lawful application to the aforesaid question or controversy.

III. The Supreme Court of Wisconsin erred in failing and refusing to follow the applicable decision of the Supreme Court of the United States in the case of *Bethlehem Steel Company, et al. vs. New York State Labor Relations Board and Allegheny Ludlum Steel Corporation v. William J. Kelly, et al.*, 330 U. S. 767, 67 Sup. Ct. 1026, 91 L. Ed. 1054.

[fol. 124] IV. The Supreme Court of Wisconsin erred in reversing the order of the Circuit Court for La Crosse County which was made and entered in this cause on May 7th, 1947.

V. The Supreme Court of Wisconsin erred in failing and refusing to affirm said order of the Circuit Court of La Crosse County reversing and setting aside the certification of a bargaining representative issued by the Wisconsin Employment Relations Board.

PRAYER FOR REVERSAL.

Wherefore, your Petitioner prays that the aforesaid final Judgment of this Court, made and entered on December 23, 1947 in the above entitled cause, be reversed and a judgment rendered in favor of your Petitioner, with costs, and for such other and further relief as to this Court may seem just and proper.

Louis Sherman, General Counsel of the International Brotherhood of Electrical Workers, 1200 Fifteenth Street, N.W., Washington 5, D. C., Attorney for Respondent.

[fol. 125] [File endorsement omitted]

IN THE SUPREME COURT OF WISCONSIN

Nos. 60 and 61

[Titles omitted]

ORDER ALLOWING APPEAL—Filed February 25, 1948

International Brotherhood of Electrical Workers, Local B-953, A. F. of L., Petitioner—Respondent in the above entitled case, having filed its Petition for appeal, praying that it be permitted to take an appeal to the Supreme Court of the United States from the final judgment of this Court, made and entered in said cause on December 23, 1947; and having also made and filed with said Petition its Assignment of Errors, Prayer for Reversal, and its Statement as to Jurisdiction, it is hereby

Ordered that said appeal be, and the same hereby is, allowed as prayed for, and that an appeal bond in the sum of $500.00 be filed by or in behalf of said Petitioner—Respondent; with good and sufficient surety.

Marvin B. Rosenberry, Chief Justice of the Supreme Court of Wisconsin.

Date: February 25th, 1948.

[fol. 126] [File endorsement omitted]

IN SUPREME COURT OF WISCONSIN

Nos. 60 and 61

[Titles omitted]

STIPULATION AS TO APPEAL BOND—Filed February 25, 1948

Whereas the parties hereto have stipulated that there be one record on the appeal of the above actions to the Supreme Court of the United States and that the appeals in said actions may be consolidated and treated as a single case before the Supreme Court of the United States for the pur-

poses of briefing, argument, consideration and decision, and

Whereas said appeals do not involve money or property judgments but the validity of a ministerial function by a state board,

Wherefore, It Is Stipulated as follows:

1. That there be no supersedeas bond in either of said actions;

. . . . . .

[fol. 127] 3. That the Chief Justice of the Supreme Court of the State of Wisconsin allow such appeal, enter an order of such allowance, and certify that satisfactory security for said costs have been provided.

Dated this 25 day of February, 1948.

John E. Martin, Attorney General of the State of Wisconsin; Stewart G. Honeck, Deputy Attorney General; Beatrice Lampert, Assistant Attorney General. T. H. Skemp, I. H. Hale, Attorneys for LaCrosse Telephone Corp., Petitioner and Respondent, 515 State Bank Building, LaCrosse, Wisconsin; Louis Sherman, General Counsel of IBEW, Pet. and Res., 1200 15th Street, N. W., Washington 5, D. C.

[fols. 128-129] Bond on appeal for $500.00 approved and filed Feb. 25, 1948, omitted in printing.

[fol. 130] Citation in usual form, filed Feb. 25, 1948, omitted in printing.

[fol. 131] [File endorsement omitted]

IN SUPREME COURT OF WISCONSIN

Nos. 60 and 61

[Titles omitted]

STIPULATION FOR TRANSCRIPT OF RECORD—Filed February 25, 1948

Whereas the above entitled cases were consolidated and treated as a single case before the Supreme Court of the State of Wisconsin for the purposes of briefing, argument, consideration and decision, and

Whereas an appeal has been taken from the decision of the Supreme Court of the State of Wisconsin to the Supreme Court of the United States in each of said actions, and

Whereas said appeals to the Supreme Court of the United States involved identical issues of law,

Now therefore, it is stipulated and agreed by and between the parties hereto that for the purposes of the appeal to the Supreme Court of the United States that there be but one record on said appeals and that the Clerk of the Supreme Court of the State of Wisconsin is requested to prepare and [fol. 132] forward to the Clerk of the Supreme Court of the United States the transcript of the record on appeal which shall include the following:

1. The printed appendices as filed in the office of the Clerk of the Supreme Court of the State of Wisconsin in the above actions;

2. The judgment of the Supreme Court of the State of Wisconsin dated December 23, 1947;

3. The petitions for appeal, assignments of error, and prayers for reversal as filed by the appellant, LaCrosse Telephone Corporation, and the Appellant International Brotherhood of Electrical Workers, Local B-953, A. F. of L.;

4. The order allowing the appeal in each of said actions;

5. The statement as to jurisdiction filed by each of the appellants; and by the appellee.

6. The notice calling attention to Supreme Court Rule 12 (3);

7. Citations on appeal in both cases.

8. Stipulation as to supersedeas and appeal bond;
9. Proof of service;
10. This stipulation as to praecipe;

This stipulation acknowledges service by the appellants upon the appellee of the citation for appeal and the notice calling attention to Supreme Court Rule 12 (3), and all papers required by Rule 12, Par. 2.

It is requested that the transcript be prepared as required by law, the rules of this court, and the Rules of the Supreme Court of the United States, and that the same be filed in the office of the Clerk of the Supreme Court of the United States within the time prescribed by this court in its order allowing appeal herein.

Dated this 25 day of February, 1948.

John E. Martin, Attorney General of the State of Wisconsin; Stewart G. Honeck, Deputy Attorney General; Beatrice Lampert, Assistant Attorney General; T. H. Skemp, I. H. Hale, Attorneys for LaCrosse Telephone Corp., Petitioner and Respondent, 515 State Bank Building, LaCrosse, Wisconsin; Louis Sherman, General Counsel of IBEW, Pet. and Res., 1200 15th Street, N. W., Washington 5, D. C.

[fol. 133] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 134] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1947.

No. 701

STATEMENT OF POINTS OF LA CROSSE TELEPHONE CORPORATION, APPELLANT, ON WHICH IT INTENDS TO RELY, AND DESIGNATION OF PARTS OF RECORD NECESSARY FOR THE CONSIDERATION THEREOF ON APPEAL, AS PROVIDED FOR BY PARAGRAPH 9 OF RULE 13 OF THE SUPREME COURT OF THE UNITED STATES—Filed May 1, 1948

Comes now the appellant in the above entitled cause, LaCrosse Telephone Corporation, and for its statement of

the points on which it intends to rely in its appeal to this court adopts the points contained in its assignment of error heretofore filed herein.

Appellant designates for the record in this case each and every document enumerated in the Stipulation for Transcript of the Record dated February 25, 1948, as being [fol. 135] necessary for the consideration of the points herein relied upon.

T. H. Skemp, I. H. Hale, Attorneys for the Appellant LaCrosse Telephone Corporation.

To John E. Martin, Attorney of the State of Wisconsin, Madison, Wisconsin, Attorney for the Appellees.

Service of the foregoing statement on behalf of the Appellee is acknowledged this 30 day of April, 1948.

John E. Martin, Attorney General; Stewart G. Honeck, Deputy; Beatrice Lampert, Assistant, Attorneys for Wisconsin Employment Relations Board.

[fol. 135a] [File endorsement omitted]

[fol. 136] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1947

No. 702

STATEMENT OF POINTS AND DESIGNATION—Filed May 1, 1948

Appellant, pursuant to the provisions of Paragraph 9 of Rule 13 of the Supreme Court of the United States, states that the points upon which it intends to rely in this case are as follows:

1. Appellant hereby adopts its Assignment of Errors as and for its Statement of Points upon which it intends to rely in this case.

Appellant hereby designates for the record in this case each and every paper enumerated in the Stipulation for

Transcript of Record dated February 25, 1948 and served and filed herein, as necessary for the consideration thereof.

Louis Sherman, General Counsel of the International Brotherhood of Electrical Workers, 1200 Fifteenth Street, N. W., Washington 5, D. C., Attorney for Appellant.

To John E. Martin, Attorney General of the State of Wisconsin, Madison, Wisconsin, Attorney for Appellees.

Acknowledgment of Service

Service of the foregoing Statement of Points and Designation is hereby acknowledged this 30 day of April.

John E. Martin, Atty. Gen.; Stewart G. Honeck, Deputy; Beatrice Lampert, Assistant.

[fol. 136a] [File endorsement omitted.]

[fol. 137] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1947

Nos. 701 & 702

ORDER POSTPONING FURTHER CONSIDERATION OF THE QUESTION OF JURISDICTION—April 19, 1948

The statements of jurisdiction in these cases having been submitted and considered by the Court, further consideration of the question of the jurisdiction of this Court is postponed to the hearing of the cases on the merits.

Endorsed on Cover: File No. 52,931, 52,932, Wisconsin, Supreme Court, Term No. 701. LaCrosse Telephone Corporation, Appellant, vs. Wisconsin Employment Relations Board, L. E. Gooding, Henry Rule and J. E. Fitzgibbon, as Members of the Wisconsin Employment Relations Board. Term No. 702. International Brotherhood of Electrical Workers, Local B-953, A. F. of L., Appellant, vs. Wisconsin Employment Relations Board, L. E. Gooding, Henry Rule and J. E. Fitzgibbon, as Members of the Wisconsin Employment Relations Board. Filed March 29, 1948. Term No. 701 O. T. 1947, 702 O. T. 1947.